

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 AUSTIN FENNER and
6 IKIMULISA LIVINGSTON,

7
8 Plaintiffs,

9 v.

09 Civ. 9832

10 (BSJ) (RLE)

11 NEWS CORPORATION, NYP HOLDINGS,
12 INC. d/b/a THE NEW YORK POST
13 and DAN GREENFIELD and
14 MICHELLE GOTTHELF,

15 Defendants.

16 -----x
17
18 DEPOSITION OF AUSTIN FENNER
19 New York, New York
20 January 11, 2012
21

22 Reported by:

23 MARY F. BOWMAN, RPR, CRR

24 JOB NO. 45411
25

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<p>1 FENNER</p> <p>2 chance to provide whatever information you</p> <p>3 want to provide into this lawsuit. Right now</p> <p>4 is an opportunity for me to ask you questions</p> <p>5 and to get the answers that I need from you</p> <p>6 to the questions that I need you to answer.</p> <p>7 So my question is, did they or did</p> <p>8 they not criticize you? That is a yes or no</p> <p>9 question.</p> <p>10 A. They wrote unfair and racially</p> <p>11 discriminating evaluating evaluations against</p> <p>12 me.</p> <p>13 Q. Mr. Fenner, the deposition will</p> <p>14 not --</p> <p>15 A. Can I finish my statement?</p> <p>16 Q. No.</p> <p>17 A. I can't finish my statement?</p> <p>18 Q. No, Mr. Fenner, because the format</p> <p>19 of this deposition is that I ask questions</p> <p>20 and you provide answers. OK. You are not</p> <p>21 entitled to provide whatever information on</p> <p>22 any subject that you want to in response to</p> <p>23 your question.</p> <p>24 MR. THOMPSON: He answered your</p> <p>25 question, objection.</p>	<p>1 FENNER</p> <p>2 Q. You need to respond to the</p> <p>3 question. We can take this up with the court</p> <p>4 if need be, but the question was they</p> <p>5 criticized you while you were there, correct?</p> <p>6 A. They wrote unfair evaluations.</p> <p>7 Q. Mr. Fenner, this deposition is not</p> <p>8 going to work --</p> <p>9 MR. THOMPSON: It is going to work.</p> <p>10 Q. -- if that's what we are going to</p> <p>11 do. So let's go off the record and take a</p> <p>12 break.</p> <p>13 MR. THOMPSON: Let's take a break.</p> <p>14 Thanks. We will take a break.</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 10:20 a.m.</p> <p>17 (Recess)</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 10:33 a.m. We are on the record.</p> <p>20 (Exhibit 1, document Bates stamped</p> <p>21 NYPFL 610 marked for identification, as</p> <p>22 of this date.)</p> <p>23 Q. Mr. Fenner, I am handing you a</p> <p>24 document that has been marked as Fenner</p> <p>25 Exhibit 1. It is an e-mail dated May 2, 2008</p>
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<p>1 FENNER</p> <p>2 from Michelle Gotthelf to you. Have you ever</p> <p>3 seen this e-mail before?</p> <p>4 A. I have.</p> <p>5 Q. And it was an e-mail you received</p> <p>6 on or about May 2 of 2008?</p> <p>7 A. That is correct.</p> <p>8 Q. What story did this e-mail concern?</p> <p>9 A. This is when Barack Obama was</p> <p>10 running for the presidency of the United</p> <p>11 States, a big media story hovering over his</p> <p>12 pastor, Jeremiah Wright, and the issue was we</p> <p>13 were trying to obtain an interview with</p> <p>14 Jeremiah Wright because he was alleged to</p> <p>15 have made controversial remarks and Barack</p> <p>16 Obama was being tied to his pastor's remarks.</p> <p>17 Q. Besides trying to get an interview</p> <p>18 with Wright, what other stories or angles</p> <p>19 were your editors looking for from you in</p> <p>20 sending you to Chicago?</p> <p>21 A. They wanted a hot story.</p> <p>22 Q. You did not get a hot story,</p> <p>23 correct?</p> <p>24 A. I produced a solid, great story</p> <p>25 about the congregation.</p>	<p>1 FENNER</p> <p>2 Q. Would you call it a hot story?</p> <p>3 A. I wouldn't call it a hot story.</p> <p>4 Q. Ms. Gotthelf sent you an e-mail on</p> <p>5 May 2 in which she said you failed us, right?</p> <p>6 A. She sent that e-mail.</p> <p>7 Q. And how long were you in Chicago?</p> <p>8 A. Several days.</p> <p>9 Q. And the story that you wrote was a</p> <p>10 story in which you interviewed a few members</p> <p>11 of Reverend Wright's church and reported what</p> <p>12 they said about it, right?</p> <p>13 A. Right.</p> <p>14 Q. Did you get an interview with</p> <p>15 Reverend Wright?</p> <p>16 A. No.</p> <p>17 Q. Did you review any of the -- did</p> <p>18 you report about any of the church's</p> <p>19 financial dealings?</p> <p>20 A. I can't recall. I don't think so.</p> <p>21 Q. Did you interview any of candidate</p> <p>22 Obama's political adversaries while you were</p> <p>23 there?</p> <p>24 A. You mean Hillary Clinton? Who are</p> <p>25 you referring to?</p>

<p style="text-align: right;">Page 38</p> <p>1 FENNER</p> <p>2 Q. Any of Obama's political</p> <p>3 adversaries, either as a local politician or</p> <p>4 national one.</p> <p>5 A. Well, the scope of the story was he</p> <p>6 was running for the presidency of the United</p> <p>7 States.</p> <p>8 Q. My question was, did you interview</p> <p>9 any of Obama's political adversaries while</p> <p>10 you were in Chicago?</p> <p>11 A. I don't recall. If I had a copy of</p> <p>12 my story, it would refresh my recollection.</p> <p>13 Q. You would -- would you agree with</p> <p>14 me that this e-mail of May 2, Fenner</p> <p>15 Exhibit 1, is a highly critical e-mail?</p> <p>16 A. Michelle Gotthelf criticized my</p> <p>17 work, yes.</p> <p>18 Q. What is the basis, do you believe</p> <p>19 that her criticism in this e-mail was an</p> <p>20 example of Ms. Gotthelf discriminating</p> <p>21 against you?</p> <p>22 A. No.</p> <p>23 Q. Did you write a response to</p> <p>24 Ms. Gotthelf to this e-mail?</p> <p>25 A. I don't recall if I did.</p>	<p style="text-align: right;">Page 39</p> <p>1 FENNER</p> <p>2 Q. Did you disagree with Ms. Gotthelf</p> <p>3 in that e-mail?</p> <p>4 A. The story I wrote was a solid</p> <p>5 story. It wasn't -- it was not a sensational</p> <p>6 story. It wasn't a -- it was a tale of what</p> <p>7 was happening. It was not a hot story.</p> <p>8 Q. So you agreed with Ms. Gotthelf</p> <p>9 that you did not get what she sent you to</p> <p>10 Chicago to get?</p> <p>11 A. Can I elaborate?</p> <p>12 Q. No. It is a simple question. Did</p> <p>13 you agree with her or not?</p> <p>14 A. The story I produced -- my goal was</p> <p>15 to get an interview with Jeremiah Wright. I</p> <p>16 didn't get that.</p> <p>17 Ms. Gotthelf is saying that she</p> <p>18 wanted a -- she wanted a sensational story,</p> <p>19 the story I produced was not that.</p> <p>20 Q. The Post is a tabloid newspaper,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Its goal is to uncover and run</p> <p>24 sensational stories, correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 40</p> <p>1 FENNER</p> <p>2 Q. And you did not do that on that</p> <p>3 trip, correct?</p> <p>4 A. Correct.</p> <p>5 MR. LERNER: I am going to mark</p> <p>6 Fenner Exhibit 2, AF 561 through 563.</p> <p>7 For the record, Fenner Exhibit 1 is</p> <p>8 Bates number NYPFL 610.</p> <p>9 (Exhibit 2, document Bates stamped</p> <p>10 AF561 through 563 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. Take a look at Fenner Exhibit 2.</p> <p>13 We will get some other copies going around.</p> <p>14 Fenner Exhibit 2 is an e-mail dated</p> <p>15 Monday, May 19, 2008. Mr. Fenner, do you</p> <p>16 recognize this e-mail?</p> <p>17 A. I'm still reading it.</p> <p>18 I recognize it.</p> <p>19 Q. The e-mail was written by Neil</p> <p>20 Sloane to you --</p> <p>21 A. That is correct.</p> <p>22 Q. -- on that date?</p> <p>23 Who is Neil Sloane?</p> <p>24 A. He is an editor.</p> <p>25 Q. Does he work for the city desk?</p>	<p style="text-align: right;">Page 41</p> <p>1 FENNER</p> <p>2 A. That is correct.</p> <p>3 Q. And what story does this e-mail</p> <p>4 concern?</p> <p>5 A. There is a singer, a crooner named</p> <p>6 R. Kelly and he was being charged in Chicago</p> <p>7 criminal court for sexual abuse of an</p> <p>8 under-age girl.</p> <p>9 Q. That was a story of national</p> <p>10 interest, is that fair to say?</p> <p>11 A. Yes.</p> <p>12 Q. Were you sent to Chicago to get</p> <p>13 that story?</p> <p>14 A. That's correct.</p> <p>15 Q. And Mr. Sloane, in his e-mail to</p> <p>16 you, was critical of the story that you</p> <p>17 wrote, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And he showed you actually two</p> <p>20 versions of the story, a version number 1 and</p> <p>21 version number 2, and asked you to compare</p> <p>22 the two, right?</p> <p>23 A. That's correct.</p> <p>24 Q. Just for the record, an e-mail</p> <p>25 version number 1 was the story that you</p>

<p style="text-align: right;">Page 42</p> <p>1 FENNER</p> <p>2 submitted and version number 2 was the story</p> <p>3 that was rewritten by somebody at the Post,</p> <p>4 right?</p> <p>5 A. They added copy to the story, yes.</p> <p>6 Q. And Mr. Fenner, you did not list</p> <p>7 Mr. Sloane as up with of the people who</p> <p>8 discriminated against you at the Post when I</p> <p>9 asked you that question earlier. Do you</p> <p>10 recall that?</p> <p>11 A. I recall that.</p> <p>12 Q. And do you stand by that answer?</p> <p>13 In other words, was Mr. Sloane somebody who</p> <p>14 discriminated against you?</p> <p>15 A. No.</p> <p>16 Q. And do you consider this e-mail to</p> <p>17 be an example of discrimination against you?</p> <p>18 A. No.</p> <p>19 Q. In the two versions, do you recall</p> <p>20 or did you determine from reading it today</p> <p>21 what the difference is between the two</p> <p>22 versions of these stories?</p> <p>23 A. The second version is longer. It</p> <p>24 has like three more sentences to it.</p> <p>25 Q. Did you, do you know what piece of</p>	<p style="text-align: right;">Page 43</p> <p>1 FENNER</p> <p>2 information is in the second version, the</p> <p>3 version that was rewritten, that wasn't in</p> <p>4 the first version?</p> <p>5 MR. THOMPSON: Objection, document</p> <p>6 speaks for itself.</p> <p>7 Q. Mr. Fenner, I would like to direct</p> <p>8 you --</p> <p>9 A. I'm reading the copy.</p> <p>10 Q. I am going to direct your</p> <p>11 attention -- you can read it -- but I am</p> <p>12 going to draw your attention to the paragraph</p> <p>13 in the second story, "They face one</p> <p>14 significant roadblock."</p> <p>15 A. I see that.</p> <p>16 Q. Mr. Fenner, would you agree that</p> <p>17 the fact that the victim of the child</p> <p>18 pornography crime denied being involved and</p> <p>19 that that fact is in the rewritten story but</p> <p>20 it was not in your story?</p> <p>21 A. That's correct.</p> <p>22 Q. Would you agree that that is an</p> <p>23 interesting and unique aspect to the story</p> <p>24 involving R. Kelly?</p> <p>25 MR. THOMPSON: Objection.</p>
<p style="text-align: right;">Page 44</p> <p>1 FENNER</p> <p>2 A. Yes.</p> <p>3 Q. And that was not in your original</p> <p>4 story, correct?</p> <p>5 MR. THOMPSON: Objection.</p> <p>6 A. No, I don't have it here.</p> <p>7 Q. Did you know that fact when you</p> <p>8 wrote your story?</p> <p>9 A. Yes.</p> <p>10 Q. And you chose to leave it out?</p> <p>11 A. I didn't choose to leave it out.</p> <p>12 Q. Did you forget to include it?</p> <p>13 A. I was under incredible deadline</p> <p>14 pressure that day. I had to obtain press</p> <p>15 credentials to get into the courtroom;</p> <p>16 otherwise, I would not have been able to</p> <p>17 cover the case and that's why I was sent to</p> <p>18 Chicago.</p> <p>19 The story I wrote is a preview</p> <p>20 story, a curtain raiser, as they call it, and</p> <p>21 I was under the gun to try to find the</p> <p>22 sheriff's office for Cook County, get my</p> <p>23 credentials and file by the 5 o'clock</p> <p>24 deadline in New York.</p> <p>25 Q. So my question was, did you forget</p>	<p style="text-align: right;">Page 45</p> <p>1 FENNER</p> <p>2 to include it?</p> <p>3 A. I would have wanted to put that in</p> <p>4 the story, yes.</p> <p>5 Q. Have you ever covered a criminal</p> <p>6 case in which the person that the prosecutor</p> <p>7 said is the victim of the crime actually</p> <p>8 comes forward in the trial and says that's</p> <p>9 not me?</p> <p>10 A. I've covered many criminal court</p> <p>11 cases.</p> <p>12 Q. Have you ever, have you ever</p> <p>13 covered a case in which the person the</p> <p>14 prosecutors say is the victim actually comes</p> <p>15 forward and says I'm not the victim of this</p> <p>16 crime, this didn't happen to me?</p> <p>17 A. I've covered cases where the victim</p> <p>18 has denied, has denied those cases, like a</p> <p>19 domestic violence case.</p> <p>20 Q. Have you ever covered a case in</p> <p>21 which the victim says I wasn't even there?</p> <p>22 A. I recall covering cases where the</p> <p>23 victim denies that the crime was committed</p> <p>24 against them.</p> <p>25 Q. You would agree that it is a unique</p>

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<p>1 FENNER</p> <p>2 fact that in a child pornography case, that</p> <p>3 the victim who the prosecutors say is</p> <p>4 portrayed in an pornographic video says,</p> <p>5 comes forward and says that's not me in the</p> <p>6 video. Have you ever seen that situation</p> <p>7 before?</p> <p>8 A. A child pornography case?</p> <p>9 Q. Yes.</p> <p>10 A. Have I covered other child</p> <p>11 pornography cases, is that what you are</p> <p>12 asking me?</p> <p>13 Q. No, I am asking have you ever seen</p> <p>14 this situation before?</p> <p>15 A. Repeat the question.</p> <p>16 Q. Have you ever seen a situation</p> <p>17 where the victim says that's not me in the</p> <p>18 tape?</p> <p>19 A. I'm sure I have.</p> <p>20 Q. You have? Can you think of any</p> <p>21 right now?</p> <p>22 A. No.</p> <p>23 Q. You would agree that both the</p> <p>24 Reverend Wright story and the R. Kelly story</p> <p>25 were important stories?</p>	<p>1 FENNER</p> <p>2 A. Without a doubt.</p> <p>3 Q. R. Kelly is, is regarded as</p> <p>4 probably, if not the most, one of the most</p> <p>5 accomplished important R&B artists in</p> <p>6 American history, correct?</p> <p>7 MR. THOMPSON: Objection.</p> <p>8 A. In American history?</p> <p>9 Q. Yes, he did win Billboard's most</p> <p>10 important R&B artist of the last 25 years</p> <p>11 award?</p> <p>12 MR. THOMPSON: Objection.</p> <p>13 A. I recall him singing at the Super</p> <p>14 Bowl.</p> <p>15 Q. Thank you. So he is a major</p> <p>16 American artist?</p> <p>17 A. He is a singer of note.</p> <p>18 Q. Mr. Fenner, I am going to hand you</p> <p>19 what has been marked as Fenner Exhibit 3. It</p> <p>20 is Bates number NYPFL523.</p> <p>21 (Exhibit 3, document Bates stamped</p> <p>22 NYPFL 523 marked for identification, as</p> <p>23 of this date.)</p> <p>24 Q. Mr. Fenner, were you glad that you</p> <p>25 were assigned to cover the R. Kelly and</p>
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<p>1 FENNER</p> <p>2 Reverend Wright stories?</p> <p>3 A. I was doing my job.</p> <p>4 Q. Did you consider those to be good</p> <p>5 assignments?</p> <p>6 A. To go out on those stories?</p> <p>7 Q. Yes.</p> <p>8 A. Those are important stories for the</p> <p>9 paper.</p> <p>10 Q. And were they -- were you happy to</p> <p>11 get those assignments?</p> <p>12 A. I want to work on important</p> <p>13 stories, yes.</p> <p>14 Q. So you were happy to get those</p> <p>15 assignments?</p> <p>16 A. Yes.</p> <p>17 MR. THOMPSON: We need an extra</p> <p>18 copy of this document you put before the</p> <p>19 witness.</p> <p>20 Q. And who gave you those assignments?</p> <p>21 A. Michelle Gotthelf.</p> <p>22 Q. Mr. Fenner, take a look at Exhibit</p> <p>23 3, please, NYPFL 523. There is a number of</p> <p>24 stories referred to in this exhibit. At the</p> <p>25 top of the page, withdrawn. Let me back up.</p>	<p>1 FENNER</p> <p>2 Have you reviewed this document</p> <p>3 before today?</p> <p>4 A. I'm reading it.</p> <p>5 Yes.</p> <p>6 Q. You have reviewed it before today?</p> <p>7 A. Yes.</p> <p>8 Q. Directing your attention to the</p> <p>9 last paragraph in the document, do you</p> <p>10 recognize the story referred to about the</p> <p>11 Bowery Wine Company?</p> <p>12 A. Yes.</p> <p>13 Q. And do you see, do you see the</p> <p>14 paragraph that was quoted there?</p> <p>15 A. I see the paragraph that was quoted</p> <p>16 there.</p> <p>17 Q. Did you write that paragraph?</p> <p>18 A. I believe I did.</p> <p>19 Q. And do you agree that there were</p> <p>20 both factual and grammatical errors in that</p> <p>21 paragraph?</p> <p>22 A. Yes.</p> <p>23 Q. Did you hear something from your</p> <p>24 editors about that at the time that you filed</p> <p>25 that story?</p>

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A. I can't recall that.

Q. Did Mr. Hechtman rewrite that story?

A. I don't know.

Q. Do you know if that story ever ran?

A. I don't know. I can't recall.

Q. Did you do anything to correct the factual and grammatical errors in that story?

A. I worked on many, many stories for the New York Post, well over 150. I can't recall exactly what I did in this particular instance.

Q. Do you believe that Mr. Hechtman discriminated against you while you were at the Post?

A. No.

Q. And who was Mr. Hechtman?

A. He was the night editor.

MR. LERNER: All right, it is 5 to 11. We have a 11 o'clock call with the court so we will take a break now.

THE VIDEOGRAPHER: The time is 10:55 a.m. We are off the record.

(Recess)

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THE VIDEOGRAPHER: The time is 11:23 a.m. We are on the record.

Q. Mr. Fenner, do you recall being assigned a story about a radio personality named Wendy Williams?

A. I wasn't assigned that story. It was an enterprise story I wrote and pitched and produced for the New York Post.

Q. And where was that story based out of?

A. New York City.

Q. And how did you come to develop that story?

MR. THOMPSON: Objection.

A. I was working as a journalist for the Post and I have many sources for stories. At that time, Ken Thompson was a practicing attorney in New York and I had developed a relationship with him and I had learned about the Wendy Williams story through him.

Q. This was in or about June of 2008?

A. I can't recall the date right now.

Q. Do you recall -- did you write that story?

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A. I did.

Q. Do you recall your editors criticizing you for missing the lead in that story?

A. I can't recall right now. If you can show me something, it would refresh my recollection.

Q. Take a look at Fenner Exhibit 3. There is a -- the fourth paragraph down, under the handwritten note "Sloane."

Do you see that paragraph? We permitted him to write a story that he did pitch on WBLS Shock Jock Wendy Williams and Austin actually missed the whole point of the story. Do you see that?

A. I read that.

Q. Was that a criticism that was communicated to you at the time?

A. I can't recall.

Q. Did Mr. Sloane tell you that the lead of the story was buried in the middle of what you wrote?

A. My editor and I collaborated on the story. I wrote the story and he made a

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suggestion that we go with another element that was in the story.

Q. What was that element?

A. If I had the story in front of me, I could tell you.

Q. Was it that Wendy Williams' husband had planned to assassinate a rival DJ of Wendy Williams?

A. I think that's what he wanted to go with as the lead.

Q. As the lead. Do you remember what you had as the lead?

A. No.

Q. Did you agree with him that that was the best lead for that story?

A. Well, you know, you could write a story in many different ways. I've written stories and the lead has been changed --

Q. I understand that. My question is --

A. I'm not finished.

MR. THOMPSON: Mr. Lerner, you have to let him finish answering your question. You can't just cut him off and

<p style="text-align: right;">Page 54</p> <p>1 FENNER</p> <p>2 he wasn't finished.</p> <p>3 Q. The question was, did you agree?</p> <p>4 MR. THOMPSON: No, no. He wasn't</p> <p>5 finished. Mark, you have cut him off</p> <p>6 repeatedly.</p> <p>7 MR. LERNER: Of course I have.</p> <p>8 MR. THOMPSON: It is improper. You</p> <p>9 have to let the witness finish answering</p> <p>10 your question. If you don't, this</p> <p>11 deposition is not going to work.</p> <p>12 MR. LERNER: I agree with that,</p> <p>13 Ken. It is not going to work if the</p> <p>14 witness doesn't answer the question.</p> <p>15 MR. THOMPSON: Please let him</p> <p>16 answer the question that you posed.</p> <p>17 MR. LERNER: I know he is going to</p> <p>18 try.</p> <p>19 Q. This is the question. The question</p> <p>20 was, did you agree that the lead that</p> <p>21 Mr. Sloane ultimately put on the story was</p> <p>22 the better lead for the story?</p> <p>23 A. I don't have the story in front of</p> <p>24 me. I need to read the whole story.</p> <p>25 Q. Let's put it in front of you.</p>	<p style="text-align: right;">Page 55</p> <p>1 FENNER</p> <p>2 Mr. Fenner, I am putting in front</p> <p>3 of you a document that has been marked as</p> <p>4 Fenner Exhibit 4, which is a binder of</p> <p>5 stories that carry your byline, and the Bates</p> <p>6 numbers are NYPFL 2633 through 3214. And I</p> <p>7 have opened it to NYPFL 3196.</p> <p>8 (Exhibit 4, document Bates stamped</p> <p>9 NYPFL 2633 through 3214 marked for</p> <p>10 identification, as of this date.)</p> <p>11 MR. THOMPSON: What was that Bates</p> <p>12 number again?</p> <p>13 MR. LERNER: 3196.</p> <p>14 MR. THOMPSON: Thanks.</p> <p>15 Q. Mr. Fenner, do you recall the lead</p> <p>16 as you have written the story?</p> <p>17 A. This is the published story.</p> <p>18 Q. Agreed. Do you recall the lead on</p> <p>19 the story that you submitted?</p> <p>20 A. I wrote many, many stories during</p> <p>21 my tenure at the New York Post. I wrote over</p> <p>22 150 stories. I worked on over 150 stories</p> <p>23 for the paper. I don't recall the lead</p> <p>24 before it was -- before we came to this one.</p> <p>25 Q. Do you have any reason to believe</p>
<p style="text-align: right;">Page 56</p> <p>1 FENNER</p> <p>2 that Mr. Sloane did not take the piece of the</p> <p>3 story that you had placed in the middle and</p> <p>4 turned it into the lead?</p> <p>5 A. No, I believe that he wanted to go</p> <p>6 with this lead.</p> <p>7 Q. And in your opinion today, did his</p> <p>8 making this the lead improve the story?</p> <p>9 A. Many reporters write stories and</p> <p>10 the leads are always changed. The editor is</p> <p>11 the final arbiter --</p> <p>12 Q. Was this a better lead?</p> <p>13 A. I wasn't finished.</p> <p>14 Q. Was this a better lead?</p> <p>15 A. I wasn't finished my comment.</p> <p>16 Q. That's the problem. It was a</p> <p>17 comment. You need to provide an answer.</p> <p>18 MR. THOMPSON: He was providing an</p> <p>19 answer.</p> <p>20 Q. And the question was, did this lead</p> <p>21 improve the story?</p> <p>22 A. I like his lead. It is a good</p> <p>23 lead. You can go with -- you can go with</p> <p>24 many different leads on a story. The New</p> <p>25 York Times is going to write a story with a</p>	<p style="text-align: right;">Page 57</p> <p>1 FENNER</p> <p>2 different lead than the New York Post. The</p> <p>3 Daily News is going to write a story with a</p> <p>4 different lead. Sometimes they are the same,</p> <p>5 sometimes they are different.</p> <p>6 Q. Was this the best lead for the New</p> <p>7 York Post?</p> <p>8 A. I like his lead, I agree with it.</p> <p>9 Q. You do not believe Mr. Sloane's</p> <p>10 actions with respect to the story were</p> <p>11 discriminatory, do you?</p> <p>12 A. His actions being changing the lead</p> <p>13 on a story?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Q. Having discussed this now, do you</p> <p>17 recall Mr. Sloane being critical of you at</p> <p>18 the time for not adopting the lead that he</p> <p>19 ultimately went with in your original story?</p> <p>20 A. He suggested we go with a different</p> <p>21 lead. That happens.</p> <p>22 Q. Was he critical of you?</p> <p>23 A. He suggested we go with this lead.</p> <p>24 He said next time -- he wanted to go with</p> <p>25 this lead.</p>

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A. They sent me back because I couldn't get the interview with the individual who we are talking about because his wife was there. She said he was in a rehab facility.

He had fallen 47 stories. He was trying to get his life back together. I interviewed the wife probably three times, and she was not there. So the reason why I went back because he was not physically in the home, he was in a rehab facility in New Jersey, near South Orange.

Q. And where did you eventually get the interview?

A. At his home.

Q. Did the story run?

A. Yes, it did.

Q. Was it a good story?

A. Yes.

Q. Did you agree with your editors that you should go back to try to persist and try to get that interview?

A. Yeah, why not. It is a great story.

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Q. How long did it take you to get that interview?

A. Like I said a moment ago, I went to his house several times. I interviewed his wife on at least three different occasions, I attempted to have her trust me with their family story and take me to the rehab facility where her husband was staying.

And through the course of time, I was building a relationship and trust. It doesn't happen overnight. Sometimes it happens that day. But you have to work people to gain their trust and this woman was relaying as she told me --

Q. Mr. Fenner, I understand that --

A. I wasn't finished my sentence.

Q. My question is how long did it take you to get that interview?

A. Can I finish my statement?

Q. I'm afraid you can't. The question is, how long did it take you to get that interview?

MR. THOMPSON: He can finish answering your question.

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FENNER

A. I don't understand your question when you said how long did it take.

Q. How many days did it take?

A. I just told you, he was not home.

Q. So I understand. Did it take a week? Did it take more than a week?

A. He was away from the home --

Q. How long between --

A. For probably weeks. He had fallen 47 stories.

Q. What is the basis of your opinion that Mr. Greenfield's criticism of you was discriminatory?

A. It is untrue and it is unfair. He says we had to constantly hound -- where are we -- Austin to get the window washer story. And I just explained where the window washer was.

Q. Did he hound you?

A. Greenfield?

Q. Yes.

A. When you say -- what do you mean hound me? Did he --

Q. Did Greenfield or your editors

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hound you --

A. They dispatched me--

Q. -- hound you to get that story?

A. They dispatched me to the window washer's house.

Q. Multiple times?

A. We had to go back because he wasn't there.

Q. Did they send you back multiple times to keep trying?

A. He was not there every time we arrived at his home.

Q. Did they send you back?

A. I had been traveling on other stories and working on other stories.

Q. Did you receive --

A. I --

Q. Did you receive instructions --

A. I wasn't finished my statement.

Q. -- instructions from your editors to go back?

A. I was juggling multiple assignments. I had to do enterprise work. I was traveling on out-of-town assignments. I

<p style="text-align: right;">Page 66</p> <p>1 FENNER</p> <p>2 was covering breaking news.</p> <p>3 Q. Did they send you back multiple</p> <p>4 times?</p> <p>5 A. Yes.</p> <p>6 Q. And what is the basis for your</p> <p>7 belief that the criticism was based on your</p> <p>8 race?</p> <p>9 A. Because this was eventually used in</p> <p>10 my evaluations which were discriminatory and</p> <p>11 unfair in assessing my work. I had done</p> <p>12 great work for the paper. I had done</p> <p>13 award-winning work for the paper.</p> <p>14 Q. Did Mr. --</p> <p>15 MR. THOMPSON: He is answering your</p> <p>16 question, Mr. Lerner. You cannot cut him</p> <p>17 off.</p> <p>18 Please continue, Mr. Fenner.</p> <p>19 A. And I had gotten exclusives for the</p> <p>20 paper. This was used to discriminate me</p> <p>21 because I am black. They used this in</p> <p>22 treating me different than my white</p> <p>23 colleagues with those evaluations and this</p> <p>24 was part of the tool they used when I had</p> <p>25 done incredible work for the paper.</p>	<p style="text-align: right;">Page 67</p> <p>1 FENNER</p> <p>2 Q. And did Mr. Greenfield ever use a</p> <p>3 racial epithet?</p> <p>4 A. He was a loose cannon.</p> <p>5 Q. Did he ever use a racial epithet?</p> <p>6 A. He cursed at me. He yelled at me.</p> <p>7 He said what the fuck are you doing.</p> <p>8 Q. Did he ever --</p> <p>9 A. He said to me, you better get your</p> <p>10 fucking ass over there. He went off on me.</p> <p>11 Q. Did he ever use a racial epithet?</p> <p>12 A. He cursed at me.</p> <p>13 Q. This is a yes or no answer,</p> <p>14 Mr. Fenner?</p> <p>15 A. He debased me.</p> <p>16 Q. Did he ever use a racial epithet?</p> <p>17 A. He --</p> <p>18 Q. Mr. Fenner. If you can't answer</p> <p>19 the question, we will get a court order</p> <p>20 requiring you to answer the question, because</p> <p>21 that is a requirement.</p> <p>22 Did he ever use a racial epithet?</p> <p>23 A. No.</p> <p>24 MR. THOMPSON: We are going to take</p> <p>25 a break.</p>
<p style="text-align: right;">Page 68</p> <p>1 FENNER</p> <p>2 MR. LERNER: Let's take a break.</p> <p>3 MR. THOMPSON: Sure.</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 11:43 a.m. We are off the record.</p> <p>6 (Recess)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 11:59 a.m., we are on the record.</p> <p>9 MR. LERNER: Mr. Thompson, I know</p> <p>10 you had a discussion with your client</p> <p>11 outside of the room. We need to have the</p> <p>12 questions that I ask answered directly.</p> <p>13 Otherwise, we are not going to finish the</p> <p>14 deposition in seven hours.</p> <p>15 MR. THOMPSON: Mr. Lerner, he has</p> <p>16 answered your question directly.</p> <p>17 MR. LERNER: I understand that's</p> <p>18 your opinion.</p> <p>19 MR. THOMPSON: It is a fact. The</p> <p>20 record will reflect that.</p> <p>21 MR. LERNER: It is not my opinion?</p> <p>22 MR. THOMPSON: It doesn't matter.</p> <p>23 The record is what it is.</p> <p>24 MR. LERNER: My point is not to</p> <p>25 argue with you whether or not he is doing</p>	<p style="text-align: right;">Page 69</p> <p>1 FENNER</p> <p>2 it. My point is to let you know if it</p> <p>3 persists, we will call the court.</p> <p>4 MR. THOMPSON: You can call the</p> <p>5 court any time you want. The purpose for</p> <p>6 us being here is to ask him questions, so</p> <p>7 ask him.</p> <p>8 Q. Mr. Fenner, are you ready to</p> <p>9 proceed?</p> <p>10 A. I'm ready.</p> <p>11 Q. On the -- with respect to the</p> <p>12 window washer, Mr. Greenfield's criticism of</p> <p>13 you was that you did not take the initiative</p> <p>14 to return to the window washer each time to</p> <p>15 try to get that interview, is that correct?</p> <p>16 A. I did on my own.</p> <p>17 Q. I am asking you if that was his</p> <p>18 criticism of you?</p> <p>19 A. I made several attempts. I took</p> <p>20 the initiative. I knew it was a great story</p> <p>21 and I got a great story.</p> <p>22 Q. Was that Mr. Greenfield's criticism</p> <p>23 of you, that you failed to take the</p> <p>24 initiative?</p> <p>25 A. I don't recall if he told me that.</p>

<p style="text-align: right;">Page 70</p> <p>1 FENNER</p> <p>2 Q. Did somebody tell you that?</p> <p>3 A. I can't recall right now.</p> <p>4 Q. Did -- was there, when you were</p> <p>5 sent back by your editors, did they express</p> <p>6 annoyance to you that they were having to</p> <p>7 tell you to go back?</p> <p>8 A. I can't recall.</p> <p>9 Q. Who told you to go back?</p> <p>10 A. My editors dispatched me to the</p> <p>11 window washer's house.</p> <p>12 Q. When you say dispatched, it means</p> <p>13 they instructed you to go back there and try</p> <p>14 to get that interview?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you recall how many times they</p> <p>17 dispatched you back to the house?</p> <p>18 A. When I went to the house and I said</p> <p>19 he wasn't there and we are not going to get</p> <p>20 anything --</p> <p>21 Q. My question is, do you recall how</p> <p>22 many times they instructed to you to go back?</p> <p>23 A. We visited the house at least three</p> <p>24 or four times.</p> <p>25 Q. And was there an instruction from</p>	<p style="text-align: right;">Page 71</p> <p>1 FENNER</p> <p>2 your editor prior to each of those times?</p> <p>3 A. Yes, we were working in</p> <p>4 collaboration.</p> <p>5 Q. Over what period of time between</p> <p>6 your first contact with the house trying to</p> <p>7 get the story and the time that you got the</p> <p>8 story, how much time elapsed?</p> <p>9 A. Between the first time we visited</p> <p>10 his home?</p> <p>11 Q. Yes.</p> <p>12 A. And the publication of the story?</p> <p>13 Q. Yes.</p> <p>14 A. How many times had we gone there?</p> <p>15 Q. No, how much time elapsed? How</p> <p>16 many days or weeks?</p> <p>17 A. I don't know exactly how many days.</p> <p>18 But like I said, the man was recuperating in</p> <p>19 the facility.</p> <p>20 Q. So you don't remember how long it</p> <p>21 was?</p> <p>22 A. I said I don't recall right now.</p> <p>23 Q. Was it more or less than one week?</p> <p>24 A. Yes.</p> <p>25 Q. So it was more than one week?</p>
<p style="text-align: right;">Page 72</p> <p>1 FENNER</p> <p>2 A. It was more than one week.</p> <p>3 Q. Was it more than --</p> <p>4 A. He was in a rehab facility.</p> <p>5 Q. Was it more than two weeks?</p> <p>6 A. What's the question?</p> <p>7 Q. How much time elapsed between your</p> <p>8 first attempt to get the interview and the</p> <p>9 time the story ran? All I am trying to get a</p> <p>10 sense of is how long did it take.</p> <p>11 A. It wasn't a week. I don't think --</p> <p>12 it wasn't a week. And I don't recall exactly</p> <p>13 how long. It might have been two, could have</p> <p>14 been three, but I don't know.</p> <p>15 Q. OK. Were you assigned to cover the</p> <p>16 Columbia expansion, Columbia University</p> <p>17 expansion?</p> <p>18 A. No, I worked with Dan Colarusso and</p> <p>19 told him this was an area that needed</p> <p>20 attention, that there were no newspapers</p> <p>21 paying attention to the Columbia expansion</p> <p>22 and we should own it.</p> <p>23 Q. Did you have a source inside</p> <p>24 Columbia University regarding the Columbia</p> <p>25 expansion?</p>	<p style="text-align: right;">Page 73</p> <p>1 FENNER</p> <p>2 A. I was developing sources, yes.</p> <p>3 Q. Did you develop a source inside</p> <p>4 Columbia University?</p> <p>5 A. Yes.</p> <p>6 Q. Who -- how did you develop that</p> <p>7 source?</p> <p>8 A. We were working the story and going</p> <p>9 to community board meetings and going to</p> <p>10 protests where people who were angry about</p> <p>11 the expansion plan had a vested interest in</p> <p>12 the issue.</p> <p>13 Q. Did you quote that source in your</p> <p>14 stories?</p> <p>15 A. I quoted several sources in my -- I</p> <p>16 quoted several sources in my stories.</p> <p>17 Q. Was that -- were those sources</p> <p>18 named in the stories?</p> <p>19 A. They might have been.</p> <p>20 Q. Did you have any confidential</p> <p>21 sources within Columbia University?</p> <p>22 A. I would have to see the work that</p> <p>23 we produced to see if it says source or not.</p> <p>24 Q. As you sit here today, can you</p> <p>25 think of any confidential source that you had</p>

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1 FENNER
 2 within Columbia University on those stories?
 3 A. I can't recall right now.
 4 Q. Did your editors assign you stories
 5 relating to the Columbia University
 6 expansion?
 7 A. No, I pitched a series of stories.
 8 One of those stories was about the Cotton
 9 Club business, and through our work, through
 10 doing great work on that story, we helped
 11 this man save his business from the imminent
 12 domain issue that was hovering over many of
 13 the businesses in Columbia, in the Columbia
 14 expansion plan.
 15 Q. How many stories did you pitch
 16 relating to the Columbia University
 17 expansion?
 18 A. Many.
 19 Q. How many ran?
 20 A. Maybe five. I can't recall the
 21 exact number right now.
 22 Q. Do you know how many you pitched?
 23 A. I can't recall the exact number
 24 right now.
 25 Q. Were any of your stories turned

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1 FENNER
 2 Q. May of '07. By May of '08, you had
 3 been at the Post about a year, correct?
 4 A. Correct.
 5 Q. And what were your -- what were
 6 your reporting duties by May of 2008? In
 7 other words, were you in the street most of
 8 the time or were you in the office most of
 9 the time?
 10 A. I was hired as an enterprise
 11 reporter which required me to pitch stories,
 12 cover breaking news, and cover out of town
 13 assignments for the paper. So it was a mix.
 14 Q. Did that group of responsibilities
 15 put you in the street most of the time or in
 16 the office? What was the --
 17 MR. THOMPSON: Objection.
 18 Q. -- what was the balance of your
 19 time?
 20 A. It was a mix.
 21 Q. Would you agree that about a year,
 22 just using about a year in May of 2008, that
 23 you were primarily working as a street
 24 reporter?
 25 A. No.

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1 FENNER
 2 down by the city desk?
 3 A. Yes.
 4 Q. How many?
 5 A. I can't recall the exact number.
 6 Q. Were you ever criticized by your
 7 editors for your reporting on the Columbia
 8 University expansion?
 9 A. I can't recall right now.
 10 Q. Did your editors tell you that you
 11 were not pitching enough stories relating to
 12 the Columbia University expansion?
 13 A. I can't recall that right now.
 14 Q. Were there any stories about the
 15 Columbia University expansion that were
 16 developed by the city desk and assigned to
 17 you?
 18 A. I can't recall if -- I can't recall
 19 if you're talking about a particular story
 20 that they might have assigned. I know I
 21 pitched many stories, that was part of my
 22 enterprise week.
 23 Q. By -- you were hired in
 24 approximately the middle of 2007, right?
 25 A. May 2007.

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1 FENNER
 2 Q. What were you -- what does the term
 3 "street reporter" mean to you?
 4 A. You mean someone who is not in the
 5 office?
 6 Q. Yes. Is that what you were
 7 primarily were by mid '08?
 8 A. Not at all.
 9 Q. You were in the office?
 10 A. I was a senior reporter working at
 11 the paper.
 12 Q. Where were you performing your job?
 13 A. I just said it was a mix.
 14 Q. So sometimes you were in the
 15 office, sometimes you were out?
 16 A. Sometimes I was in the office,
 17 sometimes I was out on breaking news
 18 assignments, sometimes I was traveling on
 19 behalf of the paper.
 20 Q. Approximately what percentage of
 21 your time by May of '08 -- you had been at
 22 the Post for one year -- were you in the
 23 office?
 24 A. I can't give you a percentage or
 25 breakdown right now.

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Q. Was it 10 percent, 20 percent?

MR. THOMPSON: Objection.

A. I think it was a mix. It might have been 33 percent on all -- I was -- it might have been a third on each one. I don't know.

Q. A third in the office, a third on the street in New York, and a third on the road traveling? Is that what you mean by 33 percent each?

A. I don't have an exact mathematical breakdown to give you.

Q. I understand that. By May of 2008, how much of your work was -- what percentage of your work was the work of a street reporter?

A. I couldn't tell you that number.

Q. How much of your work was producing enterprise stories?

A. Like I said, it was a mix. And I can't give you a mathematical breakdown.

Q. What enterprise stories did you produce during the first year of your employment at the Post?

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A. I did several. I did many. I wrote stories about an identity theft story. It was a military burial -- it was a -- it was an identity theft story.

Q. Got it. Identity theft in a military burial?

A. Right.

Q. What else?

A. It was a man who had been convicted of murder in Connecticut who had mistakenly assumed his neighbor had molested his child and I was able to get this man to send a handwritten, handwritten letter about why he did this and what went wrong.

Q. A letter to whom?

A. It was addressed to me at the New York Post.

Q. Can you define an enterprise story?

A. An enterprise story is an story that's off the radar, a story that is original reporting and of interest to the public.

Q. Does it involve more research and more reporting than a nonenterprise story?

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FENNER

A. It can.

Q. But it is original, off the radar and it is of interest to the public?

A. Those are some of the elements.

Q. Can you think of any other enterprise story that you wrote in your first year at the Post?

A. The Columbia expansion stories, the Wendy Williams story. And there were others.

Q. Can you tell me what the others were?

A. If I had a list, I could refresh my recollection.

Q. Did you ever decline a request to stay late to cover a breaking news story?

A. Did I ever decline a request to stay late?

Q. Yes, to cover a breaking news story?

A. I think you're referring to a story where I had child care issues and I had to pick up my daughter from my mother's house and my wife was out of town.

My mother, at that time, would have

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been about 86. So I think that's what you might be referring to.

Q. So the answer is yes, you did?

A. Can you repeat the question?

Q. Did you ever decline a request to stay late to cover a breaking news story?

A. I had child care issues. I had to -- I called my editors to see if they could send someone to relieve me. So the answer is I never declined a request to stay late, no. The answer is no.

Q. The answer is --

A. I didn't decline a request. I called in to get relief on a story. I never declined a request to stay late on a story.

Q. And what happened after you made that call?

A. The editors looked to see if there were any other reporters who were starting their shifts and who could relieve me.

Q. Did they find any?

A. I can't recall in this particular one. I would assume that happened.

Q. You did not cover that story?

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FENNER

Q. Mr. Fenner, it is a yes or no question. Did they tell you that it was because of your race?

A. No, they didn't have to say it was because I'm black.

Q. So the answer is no, they didn't?

A. I said no, they didn't have to say it was because I'm black.

Q. But they -- OK. And did anybody else at the New York Post tell you that the reason for this negative performance evaluation was because you're African American?

A. There is many people that work at the New York Post. I was presented this review by my supervisor and Amy Scialdone.

Q. Did Ms. Gotthelf ever use racially derogatory language with you that referenced the fact that you are an African American?

A. She was outright nasty to me. She was constantly yelling at me and giving me unfair criticisms about my work.

Q. Did she ever say anything that used a racial epithet or referred to the fact that

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you are African American?

A. Not to my knowledge. I didn't hear her use a racial epithet.

Q. And same question about Ms. Scialdone, did she ever do that?

A. Not to my knowledge, I didn't hear her use a racial epithet.

Q. Did Michelle Gotthelf or Dan Greenfield ever raise their voice at white reporters?

A. Not to my knowledge. If they did, I wasn't around.

Q. Do you know for a fact that Michelle Gotthelf and Dan Greenfield did not yell at white reporters?

A. They did not yell at white reporters?

Q. Yeah, do you know that for a fact?

A. I don't know -- I don't know it for a fact.

Q. Do you have any reason to believe that Michelle Gotthelf and Dan Greenfield never yelled at white reporters working on the city desk?

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FENNER

A. Repeat your question.

Q. Do you have any reason to believe that --

MR. LIPPNER: Mark.

Q. Withdrawn.

One of the criticisms in this performance evaluation is that during your first year at the Post, you did not initiate or produce top notch enterprise stories for the Post?

A. Your question is?

Q. Is that criticism, was that criticism of you factually based?

A. It is unfair. It is unfair --

Q. Why is it unfair?

A. Because I did -- I did great work as a journalist, as a reporter for the New York --

Q. Did you produce top notch --

A. Yes.

MR. THOMPSON: Mr. Lerner, don't cut off the witness. You have to let the witness finish answering his question.

Q. -- for the New York Post?

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FENNER

A. I did great work, award-winning work.

Q. What award did you win for your work at the Post during the first year?

A. The New York Post covered the Obama inauguration and they won the coveted New York Press Club Award in 2010. I wrote a story, enterprise story about a Harlem congregation that Martin Luther King visited ten days before his assassination and this congregation was attending.

Q. Mr. Fenner, --

A. I wasn't finished.

Q. I don't need to know all the details about the story. My question is what award did you win and you said the New York Post won an award.

A. I was part of a team, the inauguration team that won the New York Press Club Award.

Q. And how many people were reporting on Obama's inauguration for the New York Post?

A. There were several people on the

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1 warning, did you change the way you did your
2 job, yes or no?

3 A. I continued to work hard. And if
4 you're -- I'm always working to improve
5 myself, so I'm not exactly sure what you're
6 asking me.

7 Q. Mr. Fenner, it is -- the question
8 is simple and it is clear. In response to
9 receiving this warning, did you change the
10 way you did your job?

11 You need to provide an answer in
12 your deposition for the record. Is the
13 answer yes, or no?

14 A. The answer is I am -- yes, I am
15 always working to improve myself, but this
16 document, this review was shocking to me. It
17 made me -- I couldn't believe I was
18 getting -- this -- I found it discriminatory.

19 Q. Mr. Fenner, is the answer yes or
20 no?

21 A. All I can tell you is I worked
22 hard. It is not -- if you are asking me if
23 this document caused me to work harder,
24 caused me to -- I realized that --
25

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1 advance the story forward?

2 A. Yes.

3 Q. And did you pitch a story that had
4 been covered by the New York Times earlier?

5 A. The New York Times had written a
6 story, that --

7 Q. It is a yes or no question. Did
8 you pitch a story that had been covered by
9 the New York Times?

10 A. The New York Times had also
11 written -- had written the story earlier in
12 the year.

13 Q. And they had cited celebrities that
14 had purchased cars there?

15 A. No, it was a preview. The place
16 hadn't opened up at that point.

17 Q. Did Mr. Greenfield tell you that
18 the story you were mentioning mentions the
19 same celebrities as the New York Times story?

20 A. Yes, because they had purchased
21 cars at the dealership. Those facts didn't
22 change.

23 Q. Did the story that you pitched
24 advance the story in Mr. Greenfield's view?
25

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1 Q. I am asking you, did it cause you
2 to work harder or change the way you did your
3 job?

4 A. It made me pause because I realized
5 I was being set up for termination, so yes is
6 the answer.

7 Q. Did it change the way you did your
8 job?

9 A. Yes.

10 MR. THOMPSON: Objection.

11 Q. How so?

12 A. It made me pause because I realized
13 that there was a picture being created for my
14 termination.

15 Q. So what did you do differently
16 after receiving the warning?

17 A. I had to triple-cross my Is and my
18 Ts, I had to watch my back, I had to watch
19 what Dan Greenfield and Michelle Gottself
20 were saying. I had to watch my back. That's
21 what happened.

22 Q. Did you pitch a story about a
23 Harlem car dealership that Mr. Greenfield
24 told you not to write unless you could
25

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1 MR. THOMPSON: Objection.

2 A. He didn't want to go with the
3 story.

4 Q. He didn't want to go with the story
5 that you pitched?

6 A. That I wrote.

7 Q. Because you -- that you wrote
8 because it did not advance the story,
9 correct?

10 A. He felt that it didn't advance the
11 story.

12 Q. Did you think that what you had
13 submitted, you had advanced the story?

14 A. The story was about the -- that
15 this place had opened up and people were
16 coming in, and it was the mood, the place of
17 business was actually happening.

18 Q. Other than that, did you think you
19 had advanced the story?

20 A. It was a good story.

21 Q. Did you think you had advanced it?

22 A. I thought it was a good story and
23 we could have gone with it in the paper.

24 Q. But you got Mr. Greenfield's point
25

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that it did not advance it beyond what the times had published?

A. I was waiting for him to offer up suggestions so we could work and collaborate to get in the paper.

Q. Did you have go back to try to advance the story, represent it with a new angle?

A. I did.

Q. Did you ever get that angle? And publish the story?

A. The paper publishes the story. I write the story.

Q. Did you ever get that angle and was that story ever published?

A. The story was not published.

Q. Did you ever get that angle?

A. I would need to look at a copy of the story.

Q. As best as you can recall, did you get that angle?

A. It would refresh my recollection if I read the story.

Q. As you sit here today, do you

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recall any angle that you could obtain to advance the story?

A. I can't answer your question --

Q. Because you don't recall?

A. Because I would need to read the story.

Q. Did you feel that Mr. Greenfield's criticism of what you presented in that instance was unfair?

A. Yes, he was blocking the story to getting in the paper.

Q. Did you think it was unfair?

A. Yes. Everything that he did during that time to me was blocking my success at the paper.

Q. Did Mr. Greenfield suggest to you to go back to the dealership and be there while a celebrity was buying a car?

A. You can't manufacture a celebrity walking in a car dealership --

Q. Was that suggestion made to you?

A. I believe I did return to the dealership to see if we could see, at the time we had visited the dealership on the

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second occasion, to see if there was any high profile people buying the car that day.

Q. And did you get that story?

A. If I had a copy of the story in front of me, it would refresh my recollection.

Q. The story wasn't published, right?

A. That's correct.

Q. Was Mr. Greenfield's reaction to your story, to this story that you wrote, do you believe that that was based on race discrimination?

A. Mr. Greenfield was on a campaign to get me out the paper.

Q. Any specific information, sir, relating to the conversations you had with Mr. Greenfield about this Harlem dealership story that causes you to believe or conclude that his decision was based on race discrimination?

A. Yes, because he used this fact in my evaluation which was then used against me as a tool -- he was trying to paint me as incompetent.

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Q. So do you know of any acts that occurred at the time this story was being pitched and written that demonstrate that Mr. Greenfield was motivated by race?

A. Repeat the question.

Q. Were there any facts that you know of that occurred at the time the story was being pitched and written that demonstrate that Mr. Greenfield was motivated by race?

A. At the time?

Q. Yes.

A. I can't -- at the time, I can't discern that, but what I do now know or what I knew then when I saw it in my evaluation cast --

Q. My question was at the time.

A. No, I don't believe so.

MR. THOMPSON: Mark, what time do you want to break for lunch? It is 1 now.

MR. LERNER: Let's go about another ten minutes.

MR. THOMPSON: Let's take a break.

MR. LERNER: I'm almost done with

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A. On Thursday.

Q. Did they move your other shifts to -- from 11 to 7 to 9 to 5?

A. That's correct.

Q. And did you -- were you agreeable to the shift change from 11 to 7 to 9 to 5?

A. No.

Q. Did you tell them you didn't want to do that?

A. I told them that the schedule I had was working great for me. I have a teenage daughter who I am getting ready for college and I use my time in the evenings to get her ready and prep her for college life.

Q. Well, wasn't it -- didn't it assist you to get home at 5 p.m. or have your shift end at 5 p.m. as opposed to 7 p.m. which worked four out of your five days when they made that change?

A. If you are a New York journalist, you are never, ever, ever work 9 to 5.

Q. So are you saying that that wasn't your schedule?

A. What I am saying is there is always

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demands that you have to tackle. There is always an extended assignment, there is always breaking news and if you want to be a part of that team, you have to be highly motivated, you have to be tenacious and you have to be relentless in getting those stories, I worked -- I never, I never ever finished a shift at 5. That's deadline.

Q. Did you, after you performed the 2 to 10 shift for a month, did you tell Michelle Gotthelf or Dan Greenfield that you wanted to be taken off that shift?

A. Yes.

Q. Did you put that in writing?

A. Did I put it in writing?

Q. Yes.

A. We had a meeting where they presented me with a change. And I verbally told them -- I verbally told them my objections to it.

Q. After doing it for four or five weeks, did you then go back and say this is not working out, I want to be -- I want to go back to an earlier shift?

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A. I asked them if they had hired someone else for the junior position, if they had found someone.

Q. What did they say?

A. I can't recall at this time exactly what they said, but I remained working in that position from May until my date of termination.

Q. Other than -- did you -- did you have any other conversations with them about that shift other than asking them if they had hired somebody?

A. I told them it was outrageous that they were banning me from the newsroom. I felt like I was being treated differently than my white colleagues at the paper. I was told I needed to call in and get permission to enter the NewsCorp. building.

Q. You didn't tell Dan Greenfield and Michelle Gotthelf that you believed you were being treated differently from white reporters, correct? You didn't say that to them, right?

A. I couldn't -- I told them I thought

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it was unfair.

Q. You were sent out in the street?

A. I was being banned from the newsroom.

Q. But you didn't say I think you're doing this to me because I'm black and you're not doing it to my white colleagues? You didn't say that, right?

A. I can't recall if I said that or not at the time.

Q. You -- you never said that to Dan Greenfield or Michelle Gotthelf?

A. But I did raise my objections to them about getting banned from the newsroom.

Q. OK, but you didn't say -- you didn't raise your objection and say you are doing this to me because of my race, correct?

A. I can't recall exactly everything that I said and what transpired in that meeting. But I raised my objections to them.

Q. You never put in any complaint or EEOC charge or your affidavit that you said that to them, right? You have never alleged in this lawsuit that you told Dan Greenfield

<p style="text-align: right;">Page 130</p> <p>1 FENNER</p> <p>2 A. I believe I did.</p> <p>3 Q. Is this written in your</p> <p>4 handwriting?</p> <p>5 A. Yes.</p> <p>6 Q. Did you write it yourself?</p> <p>7 A. Yes.</p> <p>8 Q. What rating did you give yourself?</p> <p>9 A. A 5.</p> <p>10 Q. That's the highest rating</p> <p>11 available?</p> <p>12 A. That's right.</p> <p>13 Q. And in the overall performance</p> <p>14 summary section, you wrote, "Fenner needs to</p> <p>15 sharpen his time management skills so he can</p> <p>16 produce more exciting, hard-hitting</p> <p>17 enterprise stories." Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And did you believe that to be</p> <p>20 correct at the time that you wrote this?</p> <p>21 A. Yes.</p> <p>22 Q. So if your editors believed that</p> <p>23 you needed to produce more hard-hitting</p> <p>24 enterprise stories, you would agree with that</p> <p>25 criticism, correct?</p>	<p style="text-align: right;">Page 131</p> <p>1 FENNER</p> <p>2 A. I had produced --</p> <p>3 Q. Mr. Fenner, would you agree with</p> <p>4 that criticism, that you needed to produce</p> <p>5 more hard-hitting enterprise stories?</p> <p>6 A. That was my job, to produce</p> <p>7 hard-hitting enterprise stories.</p> <p>8 Q. Mr. Fenner, if your editors had</p> <p>9 that criticism of you, you agreed with it?</p> <p>10 You wrote it in this self-evaluation, right?</p> <p>11 A. I did.</p> <p>12 Q. You also listed in the</p> <p>13 self-evaluation three stories that you</p> <p>14 believed represented your overall</p> <p>15 achievements at the Post during this review</p> <p>16 period; a story about the appointment of</p> <p>17 Archbishop Dolan, an interview of a passenger</p> <p>18 that came out of the plane in a landed in the</p> <p>19 Hudson River, and the story you did on the</p> <p>20 church bus that went to watch the Obama</p> <p>21 inauguration, right?</p> <p>22 A. Yes.</p> <p>23 Q. Those are the three stories that</p> <p>24 you listed under "overall achievements,"</p> <p>25 right?</p>
<p style="text-align: right;">Page 132</p> <p>1 FENNER</p> <p>2 A. That's correct.</p> <p>3 Q. And in citing them, you were</p> <p>4 seeking to indicate what you thought were the</p> <p>5 highlights of your year, fiscal year 2009</p> <p>6 working for the Post, right?</p> <p>7 A. Yes, this was representative of my</p> <p>8 work.</p> <p>9 Q. Well, it was representative of your</p> <p>10 best work, right?</p> <p>11 A. Some of my best work.</p> <p>12 Q. The story about the gentleman who</p> <p>13 was on the plane that landed in the Hudson</p> <p>14 River, that was an interview of a guy who</p> <p>15 came out of the water in his underwear,</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Isn't it true that both the New</p> <p>19 York Times and the Associated Press</p> <p>20 interviewed the same guy on the same day as</p> <p>21 you interviewed him?</p> <p>22 A. They probably did.</p> <p>23 Q. So there was nothing unique or</p> <p>24 extraordinary about that story, right?</p> <p>25 A. It was a great story. It was</p>	<p style="text-align: right;">Page 133</p> <p>1 FENNER</p> <p>2 unique. That's why I put it on my</p> <p>3 self-evaluation. To get that story --</p> <p>4 Q. Why was it unique if the New York</p> <p>5 Times interviewed the same individual and the</p> <p>6 Associated Press interviewed the same</p> <p>7 individual?</p> <p>8 A. It was unique because all of New</p> <p>9 York media was there. Everyone was trying to</p> <p>10 get that story. I don't know who else got</p> <p>11 it, but it was my job to get it for the New</p> <p>12 York Post.</p> <p>13 Q. The coverage of the bus ride to</p> <p>14 Washington DC to watch the Obama</p> <p>15 inauguration, that was a single story,</p> <p>16 correct?</p> <p>17 A. That was a sidebar that was part of</p> <p>18 the inauguration package that the Post</p> <p>19 produced when Obama took the office, the oath</p> <p>20 of office. And when I had -- when I was</p> <p>21 working on the Miracle on the Hudson story, I</p> <p>22 was the lead reporter for the paper. That</p> <p>23 was the day when the airplane crashed into</p> <p>24 the ocean and Michelle Gotthelf called my</p> <p>25 name across the newsroom and dispatched me as</p>

<p style="text-align: right;">Page 134</p> <p>1 FENNER</p> <p>2 the first reporter. It was her knee-jerk</p> <p>3 reaction to make sure she could send her best</p> <p>4 reporter to this big event that happened in</p> <p>5 New York.</p> <p>6 Q. But you did not write the news</p> <p>7 story on the "Miracle on the Hudson,"</p> <p>8 correct?</p> <p>9 A. I worked with many -- there was</p> <p>10 probably 15 to 20 reporters who worked</p> <p>11 on that story. I don't have the exact</p> <p>12 number --</p> <p>13 Q. Your byline went on the story of</p> <p>14 the interview of one of the passengers,</p> <p>15 right?</p> <p>16 MR. THOMPSON: Mr. Lerner, please</p> <p>17 don't interrupt the witness when he is</p> <p>18 testifying and trying to answer.</p> <p>19 Q. Correct?</p> <p>20 A. What was your question?</p> <p>21 Q. Your byline went on the story of</p> <p>22 the interview of one passenger, right?</p> <p>23 A. No, I believe my byline was on the</p> <p>24 main body of a --</p> <p>25 Q. You believe it was?</p>	<p style="text-align: right;">Page 135</p> <p>1 FENNER</p> <p>2 A. I don't have it in front of me, but</p> <p>3 I believe my byline was the lead byline in</p> <p>4 the story.</p> <p>5 Q. If we looked at the paper's</p> <p>6 archives, we could determine whether or not</p> <p>7 your byline was on there, right?</p> <p>8 A. I guess we could.</p> <p>9 Q. What did you report with respect to</p> <p>10 your work that was other than the interview</p> <p>11 of the guy who came out of the water in his</p> <p>12 underwear?</p> <p>13 A. I was writing about the emergency</p> <p>14 services -- the emergency -- the first</p> <p>15 responders who were rushing to save the</p> <p>16 people who were trapped on the plane as it</p> <p>17 was slowly submerging into the icy waters of</p> <p>18 the Hudson.</p> <p>19 Q. Did you get any interviews of any</p> <p>20 of those emergency responders?</p> <p>21 A. I got many interviews and I filled</p> <p>22 my notebook up that day.</p> <p>23 Q. Did you interview any of the</p> <p>24 emergency responders?</p> <p>25 A. If I had the story in front of me,</p>
<p style="text-align: right;">Page 136</p> <p>1 FENNER</p> <p>2 it would refresh my recollection.</p> <p>3 Q. You don't have a recollection now</p> <p>4 of having done that though, right?</p> <p>5 A. If I interviewed any of the first</p> <p>6 responders?</p> <p>7 Q. Yes.</p> <p>8 A. I interviewed probably more than 20</p> <p>9 people that day, so.</p> <p>10 Q. Did you interview the ferry boat</p> <p>11 captain that was first on the scene?</p> <p>12 A. I can't recall exactly -- I can't</p> <p>13 recall if I interviewed the ferry boat</p> <p>14 captain.</p> <p>15 Q. How many other reporters were sent</p> <p>16 by the New York Post to the scene that day?</p> <p>17 A. Many.</p> <p>18 Q. A dozen?</p> <p>19 A. I don't have an exact number.</p> <p>20 Q. Could be a dozen?</p> <p>21 A. I would assume that it was all</p> <p>22 hands on deck.</p> <p>23 Q. And what does that mean in terms of</p> <p>24 a number?</p> <p>25 A. That means this, this was the --</p>	<p style="text-align: right;">Page 137</p> <p>1 FENNER</p> <p>2 Q. What does that mean in terms of the</p> <p>3 number of reporters?</p> <p>4 A. That people would have been just</p> <p>5 rushing to the scene.</p> <p>6 Q. How many reporters is all hands on</p> <p>7 deck?</p> <p>8 A. I don't have an exact number for</p> <p>9 you.</p> <p>10 Q. Is it more than a dozen?</p> <p>11 A. It could be.</p> <p>12 Q. Is it more than 20?</p> <p>13 A. It could be.</p> <p>14 Q. In the story about the bus ride to</p> <p>15 Obama's inauguration, you met a church group</p> <p>16 at -- in the wee hours of the morning,</p> <p>17 correct, about 2 o'clock in the morning?</p> <p>18 A. That sounds right. It was</p> <p>19 midnight.</p> <p>20 Q. And you rode on the bus -- and the</p> <p>21 buses departed New York and drove to</p> <p>22 Washington DC to participate in the Obama</p> <p>23 inauguration events, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And when did you file the story on</p>

<p style="text-align: right;">Page 138</p> <p>1 FENNER</p> <p>2 that bus ride?</p> <p>3 A. Later on that afternoon. It was --</p> <p>4 I can't recall the exact hour. But there</p> <p>5 were like 2 or 3 million people packed into</p> <p>6 that area.</p> <p>7 Q. What was extraordinary about your</p> <p>8 reporting of that bus ride that caused you to</p> <p>9 list it as one of your main achievements for</p> <p>10 2009?</p> <p>11 A. We were able to show how New</p> <p>12 Yorkers who were connected to King were able</p> <p>13 to see King -- were able to see Obama become</p> <p>14 president. There were people on that bus who</p> <p>15 were members of the congregation at the time</p> <p>16 that King was assassinated and they -- they</p> <p>17 were making almost this sacred pilgrimage to</p> <p>18 DC to connect King's dream and the actuality</p> <p>19 of the United States had voted in Barack</p> <p>20 Obama as president.</p> <p>21 Q. Did you cover any other aspects of</p> <p>22 the Obama inauguration?</p> <p>23 A. My job was that sidebar I just</p> <p>24 mentioned, the Canaan congregation from</p> <p>25 Harlem, being one of scores of buses that</p>	<p style="text-align: right;">Page 139</p> <p>1 FENNER</p> <p>2 made this massive caravan, and this bus, at a</p> <p>3 unique place in American history.</p> <p>4 Q. You also indicated in this</p> <p>5 self-evaluation your coverage of Archbishop</p> <p>6 Dolan's arranging for a family to adopt an</p> <p>7 severely handicapped child. Did you consider</p> <p>8 that to be one of your best achievements in</p> <p>9 that year?</p> <p>10 A. That would rank as one of the best</p> <p>11 achievements I have had as a journalist in my</p> <p>12 career. During this trip, this is when I was</p> <p>13 treated to a racially --</p> <p>14 Q. Mr. Fenner --</p> <p>15 A. -- hostile tirade.</p> <p>16 Q. Mr. Fenner, the question was, the</p> <p>17 question was, was that one of your best</p> <p>18 achievements?</p> <p>19 A. Yes.</p> <p>20 Q. OK. Which story are you referring</p> <p>21 to with respect to Dolan? Is it the story</p> <p>22 about the adoption of the handicapped child?</p> <p>23 A. Specifically, the entire package</p> <p>24 was top notch.</p> <p>25 Q. How did you obtain the interview?</p>
<p style="text-align: right;">Page 140</p> <p>1 FENNER</p> <p>2 A. I wasn't finished.</p> <p>3 Q. The piece about him -- you answered</p> <p>4 me. It was the entire package.</p> <p>5 A. I was trying to finish my sentence.</p> <p>6 Q. I need to move. I have a lot of</p> <p>7 questions to get through.</p> <p>8 MR. THOMPSON: You may have a lot</p> <p>9 of questions --</p> <p>10 MR. LERNER: We are going to call</p> <p>11 the court to get more time.</p> <p>12 MR. THOMPSON: You can call the</p> <p>13 court. You wanted to get more time</p> <p>14 before you started this deposition. You</p> <p>15 have repeatedly interrupted Mr. Fenner.</p> <p>16 You have to let him answer your</p> <p>17 questions.</p> <p>18 MR. LERNER: I need to have him</p> <p>19 answer the questions.</p> <p>20 MR. THOMPSON: He is answering your</p> <p>21 questions, Mr. Lerner. Let him.</p> <p>22 Q. Do you recall the question?</p> <p>23 A. This piece that you are referring</p> <p>24 to showed Dolan to be a miracle worker, the</p> <p>25 fact that this woman was pro life and needed</p>	<p style="text-align: right;">Page 141</p> <p>1 FENNER</p> <p>2 the bishop's hand to help her find a safe</p> <p>3 home for her disabled child who suffered</p> <p>4 many, many disabilities.</p> <p>5 Q. Mr. Fenner, the question was, did</p> <p>6 you consider this to be one of your best</p> <p>7 achievements in that year? The answer is</p> <p>8 either yes or no. OK.</p> <p>9 How did you get the interview of</p> <p>10 Archbishop Dolan?</p> <p>11 A. Which one? I did many.</p> <p>12 Q. The one -- your first interview of</p> <p>13 Dolan?</p> <p>14 A. I interviewed him at the parish.</p> <p>15 Q. Were you assigned by your editors</p> <p>16 to go to Milwaukee to try to get that</p> <p>17 interview?</p> <p>18 A. I was dispatched there.</p> <p>19 Q. You were dispatched there. Was the</p> <p>20 interview set up before you left?</p> <p>21 A. No.</p> <p>22 Q. So you didn't have a source within</p> <p>23 the parish that enabled you to get that</p> <p>24 interview assignment, right?</p> <p>25 A. I developed a source. That's why I</p>

<p style="text-align: right;">Page 142</p> <p>1 FENNER</p> <p>2 was able to come up with the miracle story.</p> <p>3 Q. And how did you get that interview</p> <p>4 once you were out there in Milwaukee?</p> <p>5 A. I asked if there were any recent</p> <p>6 articles Cord covered in the Catholic Weekly</p> <p>7 that mentioned Dolan and what kind of work he</p> <p>8 did.</p> <p>9 Q. Who did you ask that of?</p> <p>10 A. I was asking a source in Milwaukee.</p> <p>11 Q. Did they supply you with an article</p> <p>12 about his arranging of the adoption of the</p> <p>13 child?</p> <p>14 A. No.</p> <p>15 Q. So how did asking that question get</p> <p>16 you the interview?</p> <p>17 A. We had a back and forth. We were</p> <p>18 talking and one question led to another.</p> <p>19 Q. Did somebody come up with the idea</p> <p>20 at the Post, come up with the idea of</p> <p>21 providing, giving Dolan some gifts?</p> <p>22 A. That was -- I made three trips to</p> <p>23 Milwaukee on behalf of the New York Post and</p> <p>24 I think this was after -- at some point, we</p> <p>25 were bringing him Yankee and -- Yankee items</p>	<p style="text-align: right;">Page 143</p> <p>1 FENNER</p> <p>2 and New York items.</p> <p>3 Q. Whose idea was it to bring him</p> <p>4 those items?</p> <p>5 A. I'm not sure. You're asking if it</p> <p>6 was the editor's or mine, is that your</p> <p>7 question?</p> <p>8 Q. Yes.</p> <p>9 A. I guess we collaborated and came up</p> <p>10 with that suggestion.</p> <p>11 Q. And you regard the Dolan stories to</p> <p>12 be some of your -- well, withdrawn.</p> <p>13 Do you regard those assignments as</p> <p>14 good assignments?</p> <p>15 A. It was really difficult for me to</p> <p>16 do my best work because what had happened to</p> <p>17 me during that trip. Dan Greenfield --</p> <p>18 Q. Were they good assignments, sir?</p> <p>19 A. Dan Greenfield hit me --</p> <p>20 MR. LIPPNER: Mark, let's call the</p> <p>21 court.</p> <p>22 A. -- with a whole load of curses.</p> <p>23 Q. Mr. Fenner, excuse me. We are</p> <p>24 going to need to call the court.</p> <p>25 MR. THOMPSON: You can call the</p>
<p style="text-align: right;">Page 144</p> <p>1 FENNER</p> <p>2 court.</p> <p>3 MR. LIPPNER: Off the record.</p> <p>4 MR. LERNER: Let's go off the</p> <p>5 record.</p> <p>6 THE VIDEOGRAPHER: The time is 2:30</p> <p>7 p.m. We are off the record.</p> <p>8 (Exhibit 8, document Bates stamped</p> <p>9 NYPFL 261 marked for identification, as</p> <p>10 of this date.)</p> <p>11 (Exhibit 9, document Bates stamped</p> <p>12 NYPFL 248 marked for identification, as</p> <p>13 of this date.)</p> <p>14 (Recess)</p> <p>15 THE VIDEOGRAPHER: The time is 3</p> <p>16 p.m., we are on the record.</p> <p>17 Q. Mr. Fenner, did you consider the</p> <p>18 assignment to cover the appointment of</p> <p>19 Timothy Dolan to be -- the Archbishop of New</p> <p>20 York, to be an assignment you were glad to</p> <p>21 receive?</p> <p>22 A. Yes.</p> <p>23 Q. It was an important story for New</p> <p>24 York, right?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 145</p> <p>1 FENNER</p> <p>2 Q. Were you -- did you consider the</p> <p>3 story of the bus trip that went to Washington</p> <p>4 DC an important story?</p> <p>5 A. Yes.</p> <p>6 Q. You were glad to have gotten that</p> <p>7 assignment?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall being reprimanded by</p> <p>10 Dan Greenfield on two occasions for still</p> <p>11 being in Teaneck, where you reside, in the</p> <p>12 morning after being instructed to go to</p> <p>13 another location?</p> <p>14 A. Is that what this e-mail is?</p> <p>15 Q. Exhibits 8 and 9, which are NYPFL</p> <p>16 261 and 248 relate to such incidents.</p> <p>17 A. Yes.</p> <p>18 Q. And in one of the incidents, you</p> <p>19 had spoken to him and he had directed you to</p> <p>20 Brookdale Hospital in Brooklyn for a story,</p> <p>21 and when he called you sometime after that,</p> <p>22 you were still in Teaneck and you told him</p> <p>23 that, correct?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. And you told him that you had had</p>

<p style="text-align: right;">Page 146</p> <p>1 FENNER</p> <p>2 to run an errand before heading into the city</p> <p>3 and you felt that you told him the truth</p> <p>4 about that when he called you and you were</p> <p>5 still in Teaneck.</p> <p>6 On the other occasion, you had</p> <p>7 been overnighted to Lanoka Harbor and you</p> <p>8 called in that morning, you were in Teaneck</p> <p>9 and he called you back a half an hour later</p> <p>10 and you were still in Teaneck, correct?</p> <p>11 A. This is true.</p> <p>12 Q. And Dan was annoyed at you in both</p> <p>13 instances and let you know that, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And those incidents were in June</p> <p>16 and August of 2009, right?</p> <p>17 A. Correct.</p> <p>18 Q. In the case of the August 2009</p> <p>19 incident, you said that you were getting gas,</p> <p>20 correct?</p> <p>21 A. Yes, I might -- yes, I mentioned</p> <p>22 that during the conversation.</p> <p>23 Q. I would like to show you a document</p> <p>24 called APA fiscal year 2009, it is NYPFL 472</p> <p>25 through 475, and it will be marked as Fenner</p>	<p style="text-align: right;">Page 147</p> <p>1 FENNER</p> <p>2 Exhibit 10.</p> <p>3 (Exhibit 10, document Bates stamped</p> <p>4 NYPFL 472 through 475 marked for</p> <p>5 identification, as of this date.)</p> <p>6 Q. Do you recognize this document,</p> <p>7 sir?</p> <p>8 A. Yes.</p> <p>9 Q. Is this the APA that Michelle</p> <p>10 Gotthelf and Dan Greenfield gave you in</p> <p>11 September of 2009?</p> <p>12 A. Yes.</p> <p>13 Q. Is that your signature on the last</p> <p>14 page?</p> <p>15 A. Yes.</p> <p>16 Q. And you did not respond to it with</p> <p>17 employee comments, correct? At least no</p> <p>18 written comments in the employee comment</p> <p>19 section on the last page, correct?</p> <p>20 A. No.</p> <p>21 Q. So it is correct that you did not</p> <p>22 write anything in that section, right?</p> <p>23 A. That's correct.</p> <p>24 Q. And did you read this APA when you</p> <p>25 received it?</p>
<p style="text-align: right;">Page 148</p> <p>1 FENNER</p> <p>2 A. I did read it.</p> <p>3 Q. It rated you a 1 which is the</p> <p>4 lowest possible rating that you can receive</p> <p>5 which stands for unacceptable, does not meet</p> <p>6 standards, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you allege that this performance</p> <p>9 evaluation was a negative performance</p> <p>10 evaluation because you are African American?</p> <p>11 A. Yes.</p> <p>12 Q. What is the basis of that</p> <p>13 allegation?</p> <p>14 A. Because the points in here are</p> <p>15 false and untrue.</p> <p>16 Q. And specifically what is false and</p> <p>17 untrue?</p> <p>18 A. It says he -- "but continues to</p> <p>19 under perform at this level and is working as</p> <p>20 a street runner at best."</p> <p>21 Q. So you would agree you were hired</p> <p>22 as a senior reporter, right?</p> <p>23 A. Yes.</p> <p>24 Q. And do you -- you believe that you</p> <p>25 were not under-performing as a senior</p>	<p style="text-align: right;">Page 149</p> <p>1 FENNER</p> <p>2 reporter?</p> <p>3 A. I did great work that year.</p> <p>4 Q. Were you -- go ahead.</p> <p>5 A. I could enumerate many of the</p> <p>6 stories that I worked on if you want.</p> <p>7 Q. What are the stories that you feel</p> <p>8 highlight yourself as a reporter for the Post</p> <p>9 in the 2009?</p> <p>10 A. During the course of the year, I</p> <p>11 got an exclusive interview with William</p> <p>12 Ayers, who was one of the founders of the</p> <p>13 Weather Underground and it was linked to</p> <p>14 Barack Obama as a friend or associate at --</p> <p>15 during the Democratic nomination.</p> <p>16 Also during that time, Hillary</p> <p>17 Clinton was on the record for talking about a</p> <p>18 mom in Ohio who was pregnant, she was</p> <p>19 pregnant, a woman who was pregnant and she</p> <p>20 had lost her baby because she didn't have</p> <p>21 healthcare. I was able to obtain an</p> <p>22 interview with her.</p> <p>23 Gregg Birnbaum, who is an editor on</p> <p>24 the desk, he covers the political, politics</p> <p>25 for the paper, said I was doing good work and</p>

<p style="text-align: right;">Page 150</p> <p>1 FENNER</p> <p>2 knew I was doing good work on that</p> <p>3 assignment.</p> <p>4 That was also the year I wrote the</p> <p>5 inauguration story, the sidebar piece. It</p> <p>6 was also the year in which I wrote about</p> <p>7 Bishop Dolan coming to New York as a next</p> <p>8 bishop.</p> <p>9 I wrote a piece in November of '08</p> <p>10 when Barack Obama had won the nomination, and</p> <p>11 I was able to find some people who were at,</p> <p>12 in Washington DC during the time King had</p> <p>13 delivered the "I Have The Dream" speech and</p> <p>14 it was also watching on television in Harlem</p> <p>15 Barack Obama make this historic move by</p> <p>16 winning the Democratic nomination. And there</p> <p>17 is other stories, but those are several of</p> <p>18 them.</p> <p>19 Q. What was the piece that you wrote</p> <p>20 about William Ayers?</p> <p>21 A. He was -- I was in Chicago and</p> <p>22 William Ayers was the center of the story and</p> <p>23 people were trying to find out if Barack</p> <p>24 Obama, who was then running for the</p> <p>25 presidency, was a friend of William Ayers who</p>	<p style="text-align: right;">Page 151</p> <p>1 FENNER</p> <p>2 was one of the founders of the Weather</p> <p>3 Underground. And in addition to that, there</p> <p>4 was another story --</p> <p>5 Q. Did you break that story or had it</p> <p>6 been -- the connection between Obama and the</p> <p>7 Weather Underground been already reported on?</p> <p>8 A. I didn't break the story, but I was</p> <p>9 able to get William Ayers to speak while the</p> <p>10 national media was focused on this issue.</p> <p>11 Q. Were any of the stories that you</p> <p>12 listed as in your 2009 year, were any of them</p> <p>13 stories in which you broke news?</p> <p>14 A. To have William Ayers speak on the</p> <p>15 record is to break news. To get the widow</p> <p>16 of -- the widower of a woman who died in Ohio</p> <p>17 who had no health insurance talk for the</p> <p>18 first time about this issue was breaking</p> <p>19 news.</p> <p>20 Q. These are, aren't these follow-ups</p> <p>21 to news stories, but not breaking news?</p> <p>22 A. William -- it was a follow-up, but</p> <p>23 it was also breaking news.</p> <p>24 Q. Because Ayers was interviewed?</p> <p>25 A. That's news.</p>
<p style="text-align: right;">Page 152</p> <p>1 FENNER</p> <p>2 Q. Did he say anything in that story</p> <p>3 that had previously been not revealed?</p> <p>4 A. I would need to read the story and</p> <p>5 the story that was published didn't contain</p> <p>6 all the facts from the interview that I</p> <p>7 obtained with William Ayers.</p> <p>8 Q. What is the definition of</p> <p>9 breaking -- of when a reporter breaks news?</p> <p>10 What does that mean, to break news?</p> <p>11 A. You reveal new information about an</p> <p>12 issue.</p> <p>13 Q. Well, is merely revealing new</p> <p>14 information, is that necessarily breaking the</p> <p>15 news? Doesn't breaking news, breaking a news</p> <p>16 story mean more than that?</p> <p>17 MR. THOMPSON: Objection.</p> <p>18 Q. It means bringing something to the</p> <p>19 public attention that the public didn't know</p> <p>20 about previously?</p> <p>21 A. If the subject of the story is</p> <p>22 speaking about an issue for the first time,</p> <p>23 that would be breaking news.</p> <p>24 Q. Was the trip to DC on the bus, was</p> <p>25 that breaking news?</p>	<p style="text-align: right;">Page 153</p> <p>1 FENNER</p> <p>2 A. That was an enterprise story.</p> <p>3 Q. It was not breaking news though,</p> <p>4 was it? It was a sidebar, right?</p> <p>5 A. It was news. We were revealing and</p> <p>6 telling the story about a community of people</p> <p>7 who live in New York.</p> <p>8 Q. Isn't it the fact that the Dolan</p> <p>9 story involving the arrangement of the</p> <p>10 adoption of a disabled child had been written</p> <p>11 on in a Catholic online publication?</p> <p>12 A. It could have been. I'm not</p> <p>13 exactly sure.</p> <p>14 Q. Isn't that where you got the story</p> <p>15 from?</p> <p>16 A. I had asked the source if there was</p> <p>17 a Catholic weekly that was tracking the</p> <p>18 efforts of Bishop Dolan. I didn't get the</p> <p>19 information from the online. I had to locate</p> <p>20 this woman, find her, spend hours to trust me</p> <p>21 with her story.</p> <p>22 Q. The fact of that adoption that</p> <p>23 Dolan arranged, that adoption was already</p> <p>24 online by the time you wrote the story for</p> <p>25 the Post, correct?</p>

Page 158	Page 159
<p>1 FENNER</p> <p>2 public, you are telling them new information.</p> <p>3 There is no reason not -- there isn't a</p> <p>4 reason to publish information that people</p> <p>5 don't need to know.</p> <p>6 Q. So if they need to know it, in your</p> <p>7 mind, it is breaking news?</p> <p>8 A. So there is two kinds of breaking</p> <p>9 news.</p> <p>10 Q. It is one kind of breaking news?</p> <p>11 A. No, I said -- there is breaks news</p> <p>12 like an emergency, and then there is also</p> <p>13 publishing new information. You wouldn't</p> <p>14 publish information if it had no merit to be</p> <p>15 printed.</p> <p>16 Q. Were you gratified to be assigned</p> <p>17 to the stories that you listed in 2009?</p> <p>18 A. Those were important stories, yes.</p> <p>19 Q. And they were good stories to get</p> <p>20 assigned as a reporter, right?</p> <p>21 A. Yes.</p> <p>22 Q. That includes the story about</p> <p>23 William Ayers, the story about Clinton</p> <p>24 talking about the woman who lost her baby,</p> <p>25 the piece on Obama's inauguration being</p>	<p>1 FENNER</p> <p>2 watched by people who had seen the "I Have A</p> <p>3 Dream" speech, right?</p> <p>4 A. Yes.</p> <p>5 Q. Do you -- do you, did you regard</p> <p>6 the assignment to cover the David Letterman</p> <p>7 affair to be a desirable assignment?</p> <p>8 A. That was a big story of the paper,</p> <p>9 yes.</p> <p>10 Q. What about the story about the</p> <p>11 Craig's list killer? That was a story --</p> <p>12 that was a story of national interest, right?</p> <p>13 A. Correct.</p> <p>14 Q. Were you assigned to cover that?</p> <p>15 A. Correct.</p> <p>16 Q. And were you pleased to be assigned</p> <p>17 that story?</p> <p>18 A. I was glad to be working for the</p> <p>19 paper and contributing on that piece.</p> <p>20 Q. You also could have had a story</p> <p>21 regarding an affair that led to the</p> <p>22 resignation of the head of the Red Cross. Do</p> <p>23 you recall that story?</p> <p>24 A. Yes.</p> <p>25 Q. That was a national -- story of</p>
Page 160	Page 161
<p>1 FENNER</p> <p>2 national interest, right?</p> <p>3 A. Yes.</p> <p>4 Q. Were you glad to be assigned to</p> <p>5 cover that story?</p> <p>6 A. Yes, it was a prominent story and I</p> <p>7 was glad to work on that story.</p> <p>8 Q. Did you cover a story involving</p> <p>9 David Copperfield, the illusionist?</p> <p>10 A. I did.</p> <p>11 Q. What was that story about?</p> <p>12 A. There was allegations that he had</p> <p>13 drugged a woman, I believe it was on a</p> <p>14 private island he owned, and he might have</p> <p>15 sexually abused this woman. And the goal of</p> <p>16 that story basically was to find the</p> <p>17 magician, David Copperfield.</p> <p>18 Q. And in fact, the cops found 2</p> <p>19 million dollars in a Las Vegas warehouse that</p> <p>20 he owned, right?</p> <p>21 A. That sounds familiar.</p> <p>22 Q. It was a warehouse that had like a</p> <p>23 concealed entrance, right?</p> <p>24 A. I was at that warehouse.</p> <p>25 Q. You traveled to Vegas to see that</p>	<p>1 FENNER</p> <p>2 warehouse?</p> <p>3 A. I saw that warehouse.</p> <p>4 Q. Were you satisfied to be assigned</p> <p>5 to cover that story?</p> <p>6 A. Yes.</p> <p>7 Q. You covered a story about A-Rod</p> <p>8 dating a stripper behind his wife's back. Do</p> <p>9 you recall that?</p> <p>10 A. I do.</p> <p>11 Q. That was a big story for New York,</p> <p>12 right?</p> <p>13 A. Very big.</p> <p>14 Q. A-Rod was already playing for the</p> <p>15 Yankees when you covered that?</p> <p>16 A. Correct.</p> <p>17 Q. Was that a good story for you to be</p> <p>18 assigned to when you were a reporter?</p> <p>19 A. Yes, it was.</p> <p>20 Q. You covered a story in which a</p> <p>21 woman stole the identity of an Ivy League</p> <p>22 graduate and pretended to be that person?</p> <p>23 A. Yes, that was a very difficult</p> <p>24 story and I did very well on it.</p> <p>25 Q. Do you consider that story to be a</p>

<p style="text-align: right;">Page 162</p> <p>1 FENNER</p> <p>2 good story to have covered?</p> <p>3 A. Yes, it was an important story for</p> <p>4 the paper and I was able to obtain an</p> <p>5 exclusive interview with Esther Reed while</p> <p>6 she was -- while she was under arrest by U.S.</p> <p>7 Marshals in a federal facility.</p> <p>8 Q. You covered the stories about the</p> <p>9 murders of Jennifer Hudson's family members,</p> <p>10 right?</p> <p>11 A. I did.</p> <p>12 Q. That was a big national story as</p> <p>13 well, right?</p> <p>14 A. Yes.</p> <p>15 Q. Good story to be assigned to?</p> <p>16 A. That was an important story, yes.</p> <p>17 Q. You covered the arrest of Joba</p> <p>18 Chamberlain for DWI when he was out in</p> <p>19 Nebraska, correct?</p> <p>20 A. Yes, I did great work on that</p> <p>21 story. We were able to find out that he had</p> <p>22 been drinking. He was at a strip club. And</p> <p>23 it caused him to fall into a fight with a</p> <p>24 patron because he was being taunted that the</p> <p>25 Red Sox were in the playoffs.</p>	<p style="text-align: right;">Page 163</p> <p>1 FENNER</p> <p>2 Q. Were you glad to get the assignment</p> <p>3 to cover that story?</p> <p>4 A. I did great work on that story.</p> <p>5 Yes, I was glad to get that assignment. It</p> <p>6 was a difficult assignment and I was able to</p> <p>7 do good work on it.</p> <p>8 Q. You covered a story involving a</p> <p>9 dispute between candidates in Alabama who</p> <p>10 argued over whether one of them should keep a</p> <p>11 contribution that they had gotten from</p> <p>12 Charles Rangel's fund raising. Do you recall</p> <p>13 that story?</p> <p>14 A. Yes.</p> <p>15 Q. Was that a good story for you to</p> <p>16 cover for New York?</p> <p>17 A. That was an important story for the</p> <p>18 paper.</p> <p>19 Q. Was it a good assignment for you?</p> <p>20 A. Yes.</p> <p>21 Q. Did you cover a story involving an</p> <p>22 engineer that was killed on the day of his</p> <p>23 graduation?</p> <p>24 A. That was in Buffalo, New York, yes.</p> <p>25 Q. Why was that story an important</p>
<p style="text-align: right;">Page 164</p> <p>1 FENNER</p> <p>2 story?</p> <p>3 A. This young man had grown up in a</p> <p>4 housing project in the Bronx, and despite all</p> <p>5 the challenges in his life, was able to get</p> <p>6 to college, study engineering and make his</p> <p>7 family proud, and on his graduation day, he</p> <p>8 was killed at a party the day before he</p> <p>9 graduated.</p> <p>10 Q. Were you gratified to be assigned</p> <p>11 to cover that story?</p> <p>12 A. Yes. That was an important story</p> <p>13 for the paper. I was glad to contribute.</p> <p>14 Q. You covered Plaxico Burress</p> <p>15 shooting himself in a nightclub, correct?</p> <p>16 A. Yes, I was in Pittsburgh,</p> <p>17 Pennsylvania for that story.</p> <p>18 Q. Was that a story of national</p> <p>19 interest?</p> <p>20 A. Oh, yes.</p> <p>21 Q. Was that a good story to be</p> <p>22 assigned to cover as a reporter?</p> <p>23 A. It was another one of the front</p> <p>24 page stories that I covered during my tenure,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 FENNER</p> <p>2 Q. You covered a story about the</p> <p>3 Olympic swimmer, Michael Phelps, getting</p> <p>4 reported for smoking marijuana?</p> <p>5 A. Yes, that was in Baltimore,</p> <p>6 Maryland.</p> <p>7 Q. That was a national scandal, right?</p> <p>8 A. It could be worldwide.</p> <p>9 Q. That was a good story to cover,</p> <p>10 right?</p> <p>11 A. It was an important story for the</p> <p>12 paper and I was glad to contribute.</p> <p>13 Q. You were glad to be assigned to</p> <p>14 cover that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall pitching a story to</p> <p>17 Dan Greenfield about a man living in an old</p> <p>18 bank building?</p> <p>19 A. Yes.</p> <p>20 Q. What was Dan's reaction to that</p> <p>21 pitch?</p> <p>22 A. He criticized me and shot it down.</p> <p>23 Q. Why did he tell you he was shooting</p> <p>24 it down?</p> <p>25 A. I recall he didn't like the story.</p>

<p style="text-align: right;">Page 166</p> <p>1 FENNER</p> <p>2 Q. Do you recall him telling you that</p> <p>3 it was because you told him that it had been</p> <p>4 covered by New York Magazine a year ago?</p> <p>5 A. That sounds familiar.</p> <p>6 Q. Did you disagree with his opinion</p> <p>7 that the story should be -- that the paper</p> <p>8 should take a pass on that story?</p> <p>9 A. I strongly disagreed with his</p> <p>10 opinion.</p> <p>11 Q. And why, if the story had been</p> <p>12 covered by New York Magazine a year ago, why</p> <p>13 isn't Dan's -- why wouldn't Dan's position</p> <p>14 that the paper should pass on it be a</p> <p>15 justified one?</p> <p>16 A. Because you could always find new</p> <p>17 angles, new developments, new changes in a</p> <p>18 story. And you don't know that unless you do</p> <p>19 the reporting and find out these new facts.</p> <p>20 Q. Did you do any of that work and</p> <p>21 present him with the new facts before you</p> <p>22 pitched it?</p> <p>23 A. He shot me down before I had a</p> <p>24 chance to dig and find out what we could.</p> <p>25 Q. So that's a no?</p>	<p style="text-align: right;">Page 167</p> <p>1 FENNER</p> <p>2 A. What's the question?</p> <p>3 Q. Did you dig up any new act facts to</p> <p>4 make the pitch more attractive?</p> <p>5 A. No, I wasn't able to because I</p> <p>6 wasn't allowed to report on the story.</p> <p>7 Q. But a lot of times, you dig up</p> <p>8 facts and angles to stories before you pitch</p> <p>9 them to your editors, right, to get them</p> <p>10 interested?</p> <p>11 A. Sometimes.</p> <p>12 Q. But you didn't do that in this</p> <p>13 case?</p> <p>14 A. I needed the time to be freed up</p> <p>15 from other work that the paper would have had</p> <p>16 me to do. In order to do the reporting on</p> <p>17 that story, I would have to not do or not</p> <p>18 cover any other assignments that the paper</p> <p>19 might have been interested in.</p> <p>20 Q. Why do you think that Dan's</p> <p>21 decision not to assign you to cover a story</p> <p>22 about a man living in a bank that had been</p> <p>23 written on by a magazine that's published in</p> <p>24 New York, why do you think that decision was</p> <p>25 the incorrect decision?</p>
<p style="text-align: right;">Page 168</p> <p>1 FENNER</p> <p>2 A. Because it would not have hurt to</p> <p>3 find out that if there was new information in</p> <p>4 it, new discoveries. You play with angles</p> <p>5 and you find new ways to get into a story.</p> <p>6 Q. Dan is entitled to his opinion and</p> <p>7 judgment as a senior editor at the Post,</p> <p>8 isn't he?</p> <p>9 A. He is and I'm also entitled to my</p> <p>10 opinion as a senior reporter, an experienced</p> <p>11 reporter who has a record of doing great</p> <p>12 work.</p> <p>13 Q. But between the two of you, he is</p> <p>14 the ranking person in the paper, right?</p> <p>15 A. He is the editor.</p> <p>16 Q. The responsibility to make the</p> <p>17 decision falls on him, right?</p> <p>18 A. Correct.</p> <p>19 Q. So you disagreed with his decision?</p> <p>20 A. That's right.</p> <p>21 Q. But did you think that his decision</p> <p>22 was unjustified or outrageous?</p> <p>23 A. Yes.</p> <p>24 Q. Did you think his decision was</p> <p>25 based on race?</p>	<p style="text-align: right;">Page 169</p> <p>1 FENNER</p> <p>2 A. Yes.</p> <p>3 Q. Why? What's the factual basis for</p> <p>4 your opinion that his decision not to cover</p> <p>5 that -- to have you not cover that story was</p> <p>6 based on race?</p> <p>7 A. They had already established a</p> <p>8 history with me and -- of being racially --</p> <p>9 of him discriminating against me because I'm</p> <p>10 black and he had no interest of advancing my</p> <p>11 career or me doing good work because he</p> <p>12 wanted me out of the paper.</p> <p>13 Q. Mr. Fenner, we went through a</p> <p>14 litany of several dozen big stories of</p> <p>15 national and regional interest, all of which</p> <p>16 were stories that you were pleased to be</p> <p>17 assigned to and gratified and you said did</p> <p>18 good work.</p> <p>19 So how can you say he wasn't</p> <p>20 interested in advancing your career when he</p> <p>21 and Michelle Gottself assigned you to all of</p> <p>22 these extremely high profile stories? And</p> <p>23 the one he didn't want to send you on was the</p> <p>24 one about a guy living in an old bank</p> <p>25 building?</p>

<p style="text-align: right;">Page 170</p> <p>1 FENNER</p> <p>2 MR. THOMPSON: Objection.</p> <p>3 Q. How do you justify that statement,</p> <p>4 sir?</p> <p>5 A. The question is what?</p> <p>6 Q. How do you justify saying that Dan</p> <p>7 Greenfield didn't want to advance your career</p> <p>8 by not sending you on a story to cover a man</p> <p>9 living in an old bank building when he, in</p> <p>10 fact, along with Michelle Gottself, sent you</p> <p>11 on some of the biggest breaking stories in</p> <p>12 the country during the time you worked at the</p> <p>13 Post?</p> <p>14 A. They both were openly hostile to me</p> <p>15 during my tenure at the paper. They both</p> <p>16 were screaming at me, and yelling at me,</p> <p>17 throughout the course of my career.</p> <p>18 Q. They were trying to get the best</p> <p>19 work out of you, weren't they?</p> <p>20 A. Yelling at me and cursing at me is</p> <p>21 not getting the best work out of me.</p> <p>22 Q. How many times did they yell at you</p> <p>23 or curse at you?</p> <p>24 A. Several.</p> <p>25 Q. Several? How many? You testified</p>	<p style="text-align: right;">Page 171</p> <p>1 FENNER</p> <p>2 that they cursed at you -- Dan Greenfield</p> <p>3 cursed at you while you were in Milwaukee on</p> <p>4 the Dolan matter. What other occasion do you</p> <p>5 remember Dan Greenfield or Michelle Gottself</p> <p>6 cursing or yelling at you?</p> <p>7 A. During the Heath Ledger story, Dan</p> <p>8 Greenfield was screaming and yelling at me.</p> <p>9 He was berating me about my work.</p> <p>10 Q. Was he trying to get better work</p> <p>11 out of you?</p> <p>12 MR. THOMPSON: Objection.</p> <p>13 A. That wasn't getting better work out</p> <p>14 of me, no.</p> <p>15 Q. Was he trying to get you to do</p> <p>16 something to cover the story more</p> <p>17 aggressively?</p> <p>18 A. I couldn't have covered the story</p> <p>19 any more aggressively.</p> <p>20 Q. In the Dolan incident, wasn't he</p> <p>21 yelling at you, telling you to get yourself</p> <p>22 to a location where Dolan was speaking that</p> <p>23 morning?</p> <p>24 A. He was cursing and yelling</p> <p>25 obscenities at me.</p>
<p style="text-align: right;">Page 172</p> <p>1 FENNER</p> <p>2 Q. But he was directing you to go to a</p> <p>3 location where Dolan was speaking that</p> <p>4 morning, right?</p> <p>5 A. We were yelling about --</p> <p>6 Q. Sir, I need you to answer this</p> <p>7 question.</p> <p>8 A. Question is again?</p> <p>9 Q. He was directing you to go to a</p> <p>10 location where Dolan was speaking that</p> <p>11 morning, correct?</p> <p>12 A. He wasn't directing me. He was</p> <p>13 screaming and yelling at me and cursing at me</p> <p>14 and yelling profanities at me. Like if you</p> <p>15 want to hear those profanities, I can tell</p> <p>16 you them.</p> <p>17 Q. Where were you when that</p> <p>18 conversation was going on?</p> <p>19 A. I was five minutes away from the</p> <p>20 Catholic parish.</p> <p>21 Q. And where was Mr. -- where was</p> <p>22 Archbishop Dolan speaking that morning?</p> <p>23 A. At the parish.</p> <p>24 Q. What was the event that he was</p> <p>25 speaking at?</p>	<p style="text-align: right;">Page 173</p> <p>1 FENNER</p> <p>2 A. There was a press conference that</p> <p>3 morning.</p> <p>4 Q. Are you sure of that?</p> <p>5 A. Yes.</p> <p>6 Q. And how did Mr. Greenfield, to your</p> <p>7 knowledge, learn about that press conference?</p> <p>8 A. It might have been through the</p> <p>9 photo desk.</p> <p>10 Q. He didn't learn about it from you?</p> <p>11 A. I called the reporter. They had</p> <p>12 hired a freelance photographer out of Chicago</p> <p>13 and I called him to tell him he needed to get</p> <p>14 to Milwaukee as soon as he could because</p> <p>15 there was a press conference at a certain</p> <p>16 hour. He informed me that he was an hour</p> <p>17 away. And I believe he then in turn, after I</p> <p>18 spoke to him, called the photo desk.</p> <p>19 Q. And until you spoke to</p> <p>20 Mr. Greenfield that morning, isn't it the</p> <p>21 case that you were not planning to attend</p> <p>22 that press conference?</p> <p>23 A. That's false.</p> <p>24 Q. Where were you -- you said you were</p> <p>25 five minutes from the Catholic parish when</p>

<p style="text-align: right;">Page 174</p> <p>1 FENNER</p> <p>2 you spoke to him? Did you tell him that?</p> <p>3 A. I didn't get a chance to tell him</p> <p>4 that because he was yelling and cursing at</p> <p>5 me.</p> <p>6 Q. Well, where were you going at</p> <p>7 that -- during that conversation? Were</p> <p>8 you --</p> <p>9 A. I was waiting for the photographer</p> <p>10 to get closer to the city, to Milwaukee. I</p> <p>11 was going to be attending the press</p> <p>12 conference.</p> <p>13 Q. But you were waiting for the</p> <p>14 photographer to show up?</p> <p>15 A. That's correct.</p> <p>16 Q. And Mr. Greenfield was concerned</p> <p>17 that if you continued to wait for the</p> <p>18 photographer, the press conference might</p> <p>19 begin without you being there, right?</p> <p>20 A. We were in Milwaukee on central</p> <p>21 time. Dan was in New York at eastern</p> <p>22 standard time. There was plenty of time for</p> <p>23 me to get to the press conference.</p> <p>24 Q. Why were you waiting for the</p> <p>25 photographer? You could cover the press</p>	<p style="text-align: right;">Page 175</p> <p>1 FENNER</p> <p>2 conference without a photographer there,</p> <p>3 right?</p> <p>4 A. That's correct.</p> <p>5 Q. So you could have gone -- you could</p> <p>6 have gone to that press conference?</p> <p>7 A. I did go.</p> <p>8 Q. Without waiting?</p> <p>9 A. I did go to the press conference.</p> <p>10 Q. So why were you waiting before you</p> <p>11 went until the photographer showed up?</p> <p>12 A. I wanted to go together with him so</p> <p>13 we could work as a team.</p> <p>14 Q. And you could have -- you didn't</p> <p>15 need the photographer there to do your job</p> <p>16 which would be to report on what happened at</p> <p>17 the press conference, right?</p> <p>18 A. I did do my job.</p> <p>19 Q. The question is you didn't need to</p> <p>20 wait for the photographer to cover the press</p> <p>21 conference, right?</p> <p>22 A. If he had failed to show up, I</p> <p>23 could have -- I would have reported on the</p> <p>24 story without him there.</p> <p>25 Q. Or you could cover the story with</p>
<p style="text-align: right;">Page 176</p> <p>1 FENNER</p> <p>2 him arriving at a different time?</p> <p>3 A. I could have. But it is better to</p> <p>4 work in tandem.</p> <p>5 Q. And --</p> <p>6 THE VIDEOGRAPHER: I am sorry to</p> <p>7 interrupt. There is a cell phone. It is</p> <p>8 interrupting testimony.</p> <p>9 (Pause)</p> <p>10 Q. Mr. Fenner, what was Dan Greenfield</p> <p>11 angry at during the conversation?</p> <p>12 A. He was cursing and yelling at me</p> <p>13 because I was not at the press conference and</p> <p>14 it wasn't scheduled to start for another 30,</p> <p>15 40 minutes.</p> <p>16 Q. Did you tell him that you didn't</p> <p>17 need to attend the press conference because</p> <p>18 you had done an exclusive interview with him?</p> <p>19 A. I told him that I had made</p> <p>20 arrangements to get personal time with the</p> <p>21 monsignor -- with the bishop after the press</p> <p>22 conference.</p> <p>23 Q. Did Mr. Greenfield take that to</p> <p>24 mean that you were going to skip the press</p> <p>25 conference and rely on the personal time you</p>	<p style="text-align: right;">Page 177</p> <p>1 FENNER</p> <p>2 had with the archbishop?</p> <p>3 MR. THOMPSON: Objection.</p> <p>4 A. I didn't get it a chance to fully</p> <p>5 explain what was going on.</p> <p>6 Q. Because he got angry?</p> <p>7 A. He was more than angry. He was</p> <p>8 yelling and cursing at me and berating me.</p> <p>9 Q. During the course of that</p> <p>10 conversation, did he ever use a racial</p> <p>11 epithet?</p> <p>12 A. No.</p> <p>13 Q. Did he ever say anything that</p> <p>14 referred to the fact that you are African</p> <p>15 American?</p> <p>16 A. No.</p> <p>17 Q. And what is your factual basis for</p> <p>18 an assertion that that episode was caused by</p> <p>19 Mr. Greenfield's animosity towards you based</p> <p>20 on race?</p> <p>21 A. He had never cursed at any other</p> <p>22 white reporters, from my white colleagues at</p> <p>23 the paper.</p> <p>24 Q. And how would you -- but you're not</p> <p>25 in a position to know all the conversations</p>

<p style="text-align: right;">Page 182</p> <p>1 FENNER</p> <p>2 during the session.</p> <p>3 Q. And you were aware that complaints</p> <p>4 of discrimination at the Post under the Post</p> <p>5 policies can be brought to the human</p> <p>6 resources department and/or the legal</p> <p>7 department, correct?</p> <p>8 A. Can you -- if you say that's so, I</p> <p>9 believe that's true.</p> <p>10 Q. Did you understand when you worked</p> <p>11 at the Post that complaints of discrimination</p> <p>12 or harassment could be brought to the HR or</p> <p>13 legal departments?</p> <p>14 A. I think that's true.</p> <p>15 Q. Did you understand that complaints</p> <p>16 of discrimination or harassment under the</p> <p>17 policies should be reported to HR and legal?</p> <p>18 A. I understand that, yes.</p> <p>19 Q. Yet, at no time during your</p> <p>20 employment at the Post did you go to HR or</p> <p>21 legal and notify them that you believed you</p> <p>22 were the victim of discrimination, correct?</p> <p>23 A. That's correct. I didn't contact</p> <p>24 HR or legal, but I did find another mechanism</p> <p>25 to enforce my complaint.</p>	<p style="text-align: right;">Page 183</p> <p>1 FENNER</p> <p>2 Q. And what mechanism was that?</p> <p>3 A. I had an interview with a media</p> <p>4 outlet called Journalisms and in that --</p> <p>5 during that interview, it was regarding a</p> <p>6 cartoon, a racist monkey cartoon that the</p> <p>7 Post published under the editors -- under Col</p> <p>8 Allan, the editor-in-chief that depicted</p> <p>9 Barack Obama, the president of the United</p> <p>10 States, as a dead chimpanzee.</p> <p>11 Q. And you -- who did you actually</p> <p>12 speak to at that interview?</p> <p>13 A. The reporter's name was Richard</p> <p>14 Prince.</p> <p>15 Q. And Richard Prince is not</p> <p>16 associated with the New York Post, right?</p> <p>17 A. No.</p> <p>18 Q. He is an independent journalist who</p> <p>19 has a blog?</p> <p>20 A. I believe he is connected to the</p> <p>21 Washington Post and the Maynard Institute and</p> <p>22 he runs a media column called Journalisms.</p> <p>23 Q. And he is not associated with</p> <p>24 NewsCorp., correct?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 184</p> <p>1 FENNER</p> <p>2 Q. Correct, right?</p> <p>3 A. He is not associated with</p> <p>4 NewsCorp., that is correct.</p> <p>5 Q. And Journalisms is an online blog,</p> <p>6 is that correct?</p> <p>7 A. They publish on the internet.</p> <p>8 Q. And did you ever speak to Dan</p> <p>9 Greenfield about your interview at</p> <p>10 Journalisms?</p> <p>11 A. I didn't speak to Dan Greenfield</p> <p>12 about my interview with Journalisms.</p> <p>13 Q. Did you ever speak to Michelle</p> <p>14 Gotthelf about your interview with</p> <p>15 Journalisms?</p> <p>16 A. I did not speak to Michelle</p> <p>17 Gotthelf about my interview with Journalisms.</p> <p>18 Q. Did you ever speak to anybody in</p> <p>19 human resources or legal department about</p> <p>20 your interview with Journalisms?</p> <p>21 A. I did not.</p> <p>22 Q. Did you ever tell any of the senior</p> <p>23 managing editors or the editor-in-chief at</p> <p>24 the Post about your interview at Journalisms?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 185</p> <p>1 FENNER</p> <p>2 Q. Do you have any basis for asserting</p> <p>3 that Dan Greenfield, Michelle Gotthelf or Col</p> <p>4 Allan ever read your interview with</p> <p>5 Journalisms?</p> <p>6 A. Yes.</p> <p>7 Q. And what is that?</p> <p>8 A. After the Post published the racist</p> <p>9 monkey cartoon, they had hired Howard</p> <p>10 Rubinstein, who was a top notch PR firm in</p> <p>11 New York City. He was to mitigate and do</p> <p>12 crisis communications for the Post. People</p> <p>13 were literally taking to the streets to</p> <p>14 protest this cartoon because it was so</p> <p>15 racially offensive.</p> <p>16 In that article that was published</p> <p>17 by Richard Prince, he says that he spoke to a</p> <p>18 spokeswoman for NewsCorp. and I believe that</p> <p>19 spokeswoman declined to give him a comment on</p> <p>20 the record.</p> <p>21 Q. So Richard Prince sought a quote</p> <p>22 from the Post and the Post declined, is</p> <p>23 that --</p> <p>24 A. He wanted an interview, yes.</p> <p>25 Q. Other than that, do you have any</p>

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further reason for the assertion or your belief, if you have this belief, that Dan Greenfield or Michelle Gotthelf or Col Allan had read or were aware of your interview with Journalisms?

A. Yes.

Q. What else?

A. Days after the cartoon was published, and then after Richard Prince's story was published, I was in Milwaukee and then I was cursed at and yelled at by Dan Greenfield.

Q. Did Dan Greenfield mention the interview you gave to Richard Prince during your conversations with him when you were in Milwaukee?

A. No.

Q. Have you ever asked Dan Greenfield if he knew about your conversation with Richard Prince?

A. No.

Q. Did you ever ask Michelle Gotthelf that?

A. No.

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dismissive of the stories I was pitching. This was an ongoing -- after she assumed the metro editor's job. This was an ongoing situation I found myself in.

Q. You had received a bad performance warning, a bad performance appraisal and a performance warning in mid 2008, correct?

A. Yes, that's when I said I'm -- I think I'm being set up.

Q. So you didn't get bad performance reviews on account of the cartoon -- on account of your comments about the cartoon, right, because you had been getting those prior to the cartoon?

A. You mean the first --

Q. The first ones were prior to the cartoon?

A. That's correct.

Q. So you had already been yelled at by Dan Greenfield, you had already gotten a negative performance review and you already had a performance warning long before the cartoon was ever published, correct?

A. That's correct.

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Q. Was that the first time Dan Greenfield screamed at you?

A. No.

Q. What was the -- so the other -- so there were times before you got an interview -- you gave an interview with Richard Prince that he screamed at you?

A. He would hang the phone up on me during conversations.

Q. You mean he would hang up on you?

A. That's right. During the Heath Ledger story, he was yelling and screaming at me on the phone during that time.

Q. So if he screamed at you before you gave the interview with Journalisms and he screamed at you after you gave the interview with Journalisms, what causes you to -- withdrawn.

How did Ms. Gotthelf's behavior change after you published the article -- after you gave the interview in Journalisms?

A. Before the Journalisms interview and after, she was nasty to me, yelling at me, complaining about my story ideas, being

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Q. What was the statement that you made that was published in the Journalisms article? Do you recall it?

A. I recall a quote that was printed in the Journalisms article was that it churned my stomach. But if you have a copy of it, it would refresh my recollection.

Q. That sounds right. Do you have any reason to believe that Dan Greenfield was offended by your saying that the cartoon churned your stomach?

A. Can you repeat the question.

Q. Yeah, how do you know that Dan Greenfield was upset at all by your statement that the cartoon churned your stomach?

A. It seemed to me retaliation against me for speaking out against the company about the racist monkey cartoon.

Q. How do you know that Dan Greenfield was offended by your statement that the cartoon churned your stomach?

A. He had already been -- I had already been subjected to a hostile work environment by him, by Michelle Gotthelf and

<p style="text-align: right;">Page 194</p> <p>1 FENNER</p> <p>2 Q. In September of 2009, after you</p> <p>3 received that performance evaluation, the</p> <p>4 Post issued you a second final written</p> <p>5 warning, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And we are going to mark NYPFL 500</p> <p>8 as Fenner Exhibit 11.</p> <p>9 (Exhibit 11, document Bates stamped</p> <p>10 NYPFL 500 marked for identification, as</p> <p>11 of this date.)</p> <p>12 Q. Do you recognize Fenner Exhibit 11?</p> <p>13 A. I recognize it.</p> <p>14 Q. Did you receive this final written</p> <p>15 warning in September of 2009?</p> <p>16 A. Yes.</p> <p>17 Q. And is that your signature at the</p> <p>18 bottom?</p> <p>19 A. Yes.</p> <p>20 Q. And is it your position that this</p> <p>21 final written warning was issued to you on</p> <p>22 the basis of your race?</p> <p>23 A. That's correct.</p> <p>24 Q. And what is your factual basis for</p> <p>25 that assertion?</p>	<p style="text-align: right;">Page 195</p> <p>1 FENNER</p> <p>2 A. Because I disagree strongly with</p> <p>3 the points made in here and this was used as</p> <p>4 a tool to fire me.</p> <p>5 Q. Did you -- were you given this</p> <p>6 during a meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Who was in the meeting?</p> <p>9 A. Michelle Gottthelf, Amy Scialdone,</p> <p>10 Dan Greenfield.</p> <p>11 Q. During that meeting, what did they</p> <p>12 say to you?</p> <p>13 A. They said many things. One of the</p> <p>14 things they said was you're not pitching</p> <p>15 enough enterprise stories, and during that</p> <p>16 conversation, I had asked for their guidance</p> <p>17 to describe a story that had recently run in</p> <p>18 the New York Post over the last two, three</p> <p>19 months, that they feel would merit an</p> <p>20 enterprise story.</p> <p>21 Neither Michelle nor Dan nor Amy</p> <p>22 could give me an answer. They sat silent and</p> <p>23 were unable to tell me or give me an example</p> <p>24 of a story that was an enterprise story</p> <p>25 published in the paper that they -- I should</p>
<p style="text-align: right;">Page 196</p> <p>1 FENNER</p> <p>2 use as a guideline for my work.</p> <p>3 Q. Isn't it a fact that you were</p> <p>4 arguing with them during that meeting about</p> <p>5 the content of this warning?</p> <p>6 A. I was strongly disagreeing with</p> <p>7 them about the contents enumerated here.</p> <p>8 Q. And you asked repeatedly, did you</p> <p>9 not, for an example of an enterprise story?</p> <p>10 A. I asked once and they were unable</p> <p>11 to give me one.</p> <p>12 Q. Didn't -- together, didn't you look</p> <p>13 at the, that day's paper, and didn't they</p> <p>14 show you stories that no other paper had that</p> <p>15 day?</p> <p>16 A. No. I asked them to give me an</p> <p>17 example of an enterprise story that ran over</p> <p>18 the last several months that they felt I</p> <p>19 should use as a guideline as an example of an</p> <p>20 enterprise story, and they -- I was</p> <p>21 dumbfounded and surprised that the three of</p> <p>22 them weren't able to give me one solid --</p> <p>23 were unable to point to one solid story.</p> <p>24 Q. Was there a copy of the New York</p> <p>25 Post there that was used during the course of</p>	<p style="text-align: right;">Page 197</p> <p>1 FENNER</p> <p>2 that meeting?</p> <p>3 A. I think there was a newspaper in</p> <p>4 the room.</p> <p>5 Q. Did anybody open it up and show it</p> <p>6 around and point to things inside the paper?</p> <p>7 A. I can't recall exactly if they did</p> <p>8 that, but I asked them straight ahead to name</p> <p>9 a story during the course of several months,</p> <p>10 not that paper -- it could have been in that</p> <p>11 paper and they could have cited that story.</p> <p>12 But I asked over a span of time and they</p> <p>13 weren't able to give me one solid story.</p> <p>14 Q. But weren't they calling your</p> <p>15 attention to stories in that day's paper</p> <p>16 during the meeting?</p> <p>17 A. We were talking about enterprise</p> <p>18 stories and I had asked them to cite an</p> <p>19 example of a story. They were unable, they</p> <p>20 were unable to cite one.</p> <p>21 Q. My question is narrower than that.</p> <p>22 During the course of the meeting, were they</p> <p>23 calling to your attention stories in that</p> <p>24 day's newspaper?</p> <p>25 A. I can't recall. If you have some</p>

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A. No, I was still working and expected to work to produce enterprise stories and my supervisors have the ultimate say on my shift and what I do. I was still required to cover out-of-town assignments, breaking news, and produce enterprise stories.

Q. But you -- your work was primarily the work of a runner reporter, correct?

A. No, that's not true. I did a variety of assignments.

Q. In the performance warning, it says, in the last paragraph, "Working as a runner for someone with your experience and at your level as a senior reporter is simply unacceptable and cannot continue any longer."

My question is, is it accurate when they said you were working as a runner?

A. I disagree with the critiques in this final written warning.

Q. Do you agree that you had been demoted into working as a runner?

A. No, the expectation and the work I did was that of a senior reporter.

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A. I was instructed to call the city desk in the morning.

Q. And await instructions regarding an assignment, correct?

A. That's correct.

Q. Isn't that what a runner reporter does?

A. A runner reporter does those things, yes.

Q. Did Greenfield tell you to work out in the field and that the city was your office?

A. Yes, that was part of the ban from the newsroom.

Q. So as best as you can recall, what did Dan Greenfield say to you during the conversation in which he told you that you should be -- you should not be coming into the newsroom?

A. He told me he didn't want me in the newsroom and that I had to ask for permission before entering the building.

Q. Anything else?

A. He said many things but that was

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Q. Did you ever get demoted to runner?

A. No.

Q. When, after the cartoon ran and you said you had a conversation with Dan Greenfield about not coming into the newsroom, was that a demotion to runner?

A. That was a -- I was being banned from the newsroom. I had to ask for permission from my white editors to enter the NewsCorp. building.

Q. Was it -- were you demoted to runner?

A. No. The expectation was that I was a senior reporter and the expectation that I produce the work of a senior reporter was still there.

Q. What did you do each morning when you began your shift?

A. I was required --

MR. THOMPSON: Objection.

Q. You can answer.

A. What did I do each morning what?

Q. Starting in May 2009, what did you do each morning when you began your shift?

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one of the things he said.

Q. My question is for you to tell us everything that he said during that conversation that you recall.

A. I can't recall all the facts and all the things he said, but that was the big theme.

Q. So he did not want you in the newsroom and call before coming in?

MR. THOMPSON: Objection.

A. Yes.

Q. Did he tell you why he did not want you in the newsroom?

A. He and Michelle Gotthelf said that they were doing things differently and they needed me to help out on a certain shift because they were short on manpower and they said that they needed me to work this shift temporarily and that we will replace you by the end of the month.

Q. Was the conversation in which you were -- Dan said that he did not want you in the newsroom the same conversation as when you were told that your shift would change?

<p style="text-align: right;">Page 210</p> <p>1 FENNER</p> <p>2 A. Yes.</p> <p>3 Q. Other than that one conversation,</p> <p>4 were there any other conversations in which</p> <p>5 you were told by Greenfield or Gotthelf that</p> <p>6 they did not want you coming into the</p> <p>7 newsroom?</p> <p>8 A. It was at that meeting when they</p> <p>9 issued the ban.</p> <p>10 Q. My question is, were there any</p> <p>11 other meetings or conversations in which they</p> <p>12 communicated the same thing?</p> <p>13 A. I can't recall right now if there</p> <p>14 were any other meetings besides that one.</p> <p>15 Q. Did they tell you they didn't want</p> <p>16 you in the newsroom because of your race</p> <p>17 being African American?</p> <p>18 A. They didn't use that language, no.</p> <p>19 Q. Did anyone tell you they didn't</p> <p>20 want you in the newsroom because you were</p> <p>21 African American?</p> <p>22 A. No, they didn't say that, but it</p> <p>23 was consistent from the hostile treatment I</p> <p>24 had been experiencing at the workplace.</p> <p>25 Q. But they didn't say that?</p>	<p style="text-align: right;">Page 211</p> <p>1 FENNER</p> <p>2 A. That is correct.</p> <p>3 Q. Did they say that the reason they</p> <p>4 wanted you to call for permission before</p> <p>5 coming to the building was because you're</p> <p>6 African American?</p> <p>7 A. They didn't say that.</p> <p>8 Q. Did anybody tell you that that was</p> <p>9 the reason for them requiring that?</p> <p>10 A. No.</p> <p>11 Q. Did they tell you why they wanted</p> <p>12 you to call for -- to get permission before</p> <p>13 coming into the office?</p> <p>14 A. They told me they were doing things</p> <p>15 differently and that they were short of</p> <p>16 manpower and they needed me to cover this</p> <p>17 particular shift.</p> <p>18 Q. Did they ever say to you that the</p> <p>19 reason they were requiring this of you was</p> <p>20 because of comments that you made to</p> <p>21 Journalisms about the cartoon?</p> <p>22 A. They didn't say that but I believe</p> <p>23 it was retaliation for that act.</p> <p>24 Q. But they didn't say it and nobody</p> <p>25 else told you that either, right?</p>
<p style="text-align: right;">Page 212</p> <p>1 FENNER</p> <p>2 A. No.</p> <p>3 Q. It is typical for reporters</p> <p>4 covering events in the field to get their</p> <p>5 assignment from the street or from their car,</p> <p>6 do the reporting from the street, and call</p> <p>7 the story in or file it by e-mail without</p> <p>8 ever coming into the office, right?</p> <p>9 A. Can you repeat the question.</p> <p>10 Q. Yeah, it is typical for reporters</p> <p>11 covering events in the field to get their</p> <p>12 assignment when they are on the street or in</p> <p>13 their car and to do the reporting in the</p> <p>14 street and call the story in or e-mail it in</p> <p>15 without ever coming into the office, right?</p> <p>16 A. There are many reporters who do</p> <p>17 that.</p> <p>18 Q. There are reporters that can go</p> <p>19 weeks without ever stepping foot in the</p> <p>20 office, right?</p> <p>21 A. They call those runners, yes.</p> <p>22 Q. There are reporters that don't even</p> <p>23 have desks in the New York Post offices,</p> <p>24 right?</p> <p>25 A. Yes, but they are not black senior</p>	<p style="text-align: right;">Page 213</p> <p>1 FENNER</p> <p>2 reporters.</p> <p>3 Q. But they are reporters writing</p> <p>4 stories, covering stories and covering</p> <p>5 important stories that don't need to come</p> <p>6 into the office to do that and don't have</p> <p>7 desks, right?</p> <p>8 A. Ikimulisa Livingston was also</p> <p>9 banned from the newsroom and she is a senior</p> <p>10 reporter and she is African American.</p> <p>11 Q. That is not my question.</p> <p>12 A. Can you repeat your question.</p> <p>13 Q. Yeah, there are reporters covering</p> <p>14 stories, covering important stories, that do</p> <p>15 that without coming into the office and</p> <p>16 without having desks, correct?</p> <p>17 A. I believe -- yes.</p> <p>18 Q. And some of those reporters are</p> <p>19 white reporters, correct?</p> <p>20 A. Yes, they are white reporters, but</p> <p>21 they are not senior reporters.</p> <p>22 Q. Do you know if Dan Greenfield or</p> <p>23 Michelle Gotthelf ever told any reporters</p> <p>24 other than you not to come into the office?</p> <p>25 A. Yes.</p>

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Q. To be out in the field?

A. Yes.

Q. You do know that?

A. Ikimulisa Livingston was a reporter who they told not to come in into -- who they told not to come into the newsroom.

Q. Do you know if they have given that instruction to any white reporters?

A. Not to my knowledge, no.

Q. How did you -- what knowledge do you have on that question as to whether or not they have given that instruction to white reporters?

A. I know they treated me differently than my white colleagues. I don't know of other white reporters who were at my level who they gave the same treatment.

Q. But you also don't know if there are white reporters at your level who were also told to be out in the field, right?

MR. THOMPSON: Objection.

Q. You don't know the conversations that Mr. Greenfield and Ms. Gotthelf had with every one of the white reporters, correct?

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A. No, I don't know every conversation they had with all the white reporters. But none of the white reporters who I spoke with told me they had the same treatment.

Q. Were you ever, did you ever call Mr. Greenfield and ask for permission to come into the office?

A. I might have.

Q. And was that permission granted?

A. Yes.

Q. Do you remember how many times?

A. I can't recall how many times.

Q. Were you ever -- you had a swipe card or identification that allowed you entrance into the building, correct?

A. Correct.

Q. Was that ever shut off prior to the time you were terminated by the Post?

A. Before I was terminated?

Q. Yes.

A. No.

Q. Were you ever -- did you ever show up at the office and were told to leave the offices, get out, after the instruction that

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Mr. Greenfield gave you?

A. No.

Q. Did you ever tell anybody about Mr. Greenfield's instruction to you to be out in the field and not come into the office without permission?

A. Yes.

Q. Who did you tell?

A. I told Ikimulisa Livingston, Jeane MacIntosh.

Q. Anybody else?

A. It might have been Dan Mangan, Len Green, and there were others, but I can't think of who those people are right now.

Q. Did Mr. Greenfield ever use the word "banned"? Or is that word to describe what occurred?

A. He said we don't want you coming into the newsroom.

Q. OK. Ban was not his word?

A. He said we don't want you coming into the newsroom.

Q. And he was -- he told you he wanted you out in the field ready to go, ready to be

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dispatched to a story at 9 a.m., right?

A. Correct.

Q. How often did you come into the office after Mr. Greenfield told you that he wanted you out of the -- out in the field?

A. I can't give you an exact number, but it was very, very few and I was so humiliated, I had to wait until late in the evening before coming into the newsroom so I could get supplies and other things I might have needed to do my job.

Q. On those occasions when you came in late in the evening, did you call for permission or did you feel at those times you could come and go as you pleased?

A. I didn't call for permission, no.

Q. Did anybody ever turn you away from the office on those occasions?

A. No.

Q. Mr. Greenfield never told you that you had to come in after hours if you needed supplies, did he?

A. No.

Q. Did you ever ask Mr. Greenfield for

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<p>1 FENNER</p> <p>2 supplies, to come in for supplies during the</p> <p>3 day?</p> <p>4 A. I can't recall.</p> <p>5 Q. Did Ms. Greenfield ever tell you --</p> <p>6 I am sorry, did Ms. Gotthelf ever tell that</p> <p>7 you you needed permission to come in, if you</p> <p>8 came after hours?</p> <p>9 A. No.</p> <p>10 Q. Did Mr. -- did you ever ask</p> <p>11 Ms. Gotthelf to come in for supplies?</p> <p>12 A. I can't recall. It's possible.</p> <p>13 Q. Did you ever call and ask</p> <p>14 Ms. Gotthelf for permission to enter the</p> <p>15 office?</p> <p>16 A. The answer is no because it was so</p> <p>17 humiliating and disrespectful, I didn't want</p> <p>18 to put myself through that.</p> <p>19 Q. Did you have a computer, a laptop</p> <p>20 at the time?</p> <p>21 A. Yes.</p> <p>22 Q. Did it have wi-fi or 3G</p> <p>23 capabilities?</p> <p>24 A. No, I had -- I would have to search</p> <p>25 and hunt for a free wi-fi at a Starbucks to</p>	<p>1 FENNER</p> <p>2 do my job.</p> <p>3 Q. And how would that work? So would</p> <p>4 you write stories on your laptop at a</p> <p>5 Starbucks or a cafe?</p> <p>6 A. I would write it up, send it in as</p> <p>7 an e-mail, or I would call it in for my</p> <p>8 notes.</p> <p>9 Q. When you were reporting stories</p> <p>10 from the field, prior to Mr. Greenfield</p> <p>11 instructing you not to come into the office,</p> <p>12 didn't you file your stories the same way;</p> <p>13 you would file them from the field from your</p> <p>14 laptop, whether you were traveling in other</p> <p>15 cities, traveling out in the boroughs, New</p> <p>16 Jersey, Westchester, Brooklyn? You didn't</p> <p>17 come into the office in the afternoon to</p> <p>18 write your stories, right?</p> <p>19 A. Not all the time, no.</p> <p>20 Q. So you were filing stories from the</p> <p>21 field prior to Mr. Greenfield's instruction</p> <p>22 not to come in, right?</p> <p>23 A. Correct.</p> <p>24 Q. And you were able to do that using</p> <p>25 a laptop computer, cell phone, and a wi-fi</p>
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<p>1 FENNER</p> <p>2 connection, right?</p> <p>3 A. Right.</p> <p>4 Q. And that's what runner reporters</p> <p>5 that work for the Post frequently do to file</p> <p>6 their stories, right?</p> <p>7 A. Senior reporters do it also. The</p> <p>8 answer is yes.</p> <p>9 Q. Did you receive a car allowance</p> <p>10 from the Post?</p> <p>11 A. Yes.</p> <p>12 Q. How much was that?</p> <p>13 A. I forget what the mileage rate was,</p> <p>14 but for every mile I drove, there was a</p> <p>15 mileage rate attached to it.</p> <p>16 Q. Do you know if other runners</p> <p>17 received that allowance?</p> <p>18 A. I believe all reporters received</p> <p>19 that.</p> <p>20 Q. Were you able to successfully</p> <p>21 perform your job in spite of Mr. Greenfield's</p> <p>22 requirement that you not come into the office</p> <p>23 without permission?</p> <p>24 A. It was difficult but I did.</p> <p>25 Q. You were a successful reporter</p>	<p>1 FENNER</p> <p>2 despite that, right?</p> <p>3 A. Yes.</p> <p>4 Q. You were successful in covering the</p> <p>5 story that -- of the bus trip to the</p> <p>6 Washington inauguration of Obama even without</p> <p>7 a photographer with you, right?</p> <p>8 A. That was a very, very difficult day</p> <p>9 to work. There were several million people</p> <p>10 within a seven block radius of capital and</p> <p>11 the monument. It was tough, but I did it.</p> <p>12 Q. Did you call the photo desk for a</p> <p>13 photographer to go with you on that bus ride?</p> <p>14 A. I made several calls to the photo</p> <p>15 desk, I put in written requests and I asked</p> <p>16 Michelle Gotthelf several times to have a</p> <p>17 photographer accompany me on that trip.</p> <p>18 Q. And this was the bus, the bus trip</p> <p>19 that left at midnight?</p> <p>20 A. I arrived, did we -- it was in the</p> <p>21 middle of the night.</p> <p>22 Q. And what did you want a</p> <p>23 photographer to take pictures of?</p> <p>24 A. The event.</p> <p>25 Q. Which event?</p>

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<p>1 FENNER</p> <p>2 A. The New Yorkers who were heading to</p> <p>3 DC.</p> <p>4 Q. What exactly did you think would be</p> <p>5 the images the photographer would capture?</p> <p>6 A. You never know what's going to</p> <p>7 happen. Once we got there, we didn't know</p> <p>8 what events might unfold, would unfold. So</p> <p>9 we have to be open and just be ready.</p> <p>10 Q. Well, so you wanted -- did you want</p> <p>11 them to take pictures of the bus ride in the</p> <p>12 middle of the night?</p> <p>13 A. You could have done a photo montage</p> <p>14 of people sleeping and partying and saying</p> <p>15 prayers. It could have been an incredible</p> <p>16 photo montage. I don't know. We will never</p> <p>17 know unless you make the effort to try to see</p> <p>18 what you can find out.</p> <p>19 Q. Do you know who made the decision</p> <p>20 at the New York Post not to assign a</p> <p>21 photographer to that trip?</p> <p>22 A. I was requesting from photo -- and</p> <p>23 I was seeking the aid of my editor, Michelle</p> <p>24 Gotthelf to get a photographer. Ultimately,</p> <p>25 the photo desk, the editors at the photo desk</p>	<p>1 FENNER</p> <p>2 have to decide, but she is one of the most</p> <p>3 powerful people in the newsroom. So she has</p> <p>4 the power to influence to make it happen.</p> <p>5 Q. Ultimately, the photo desk editors</p> <p>6 decide what stories get a photographer</p> <p>7 assigned, right?</p> <p>8 A. I don't know who would make that</p> <p>9 ultimate determination. Normally they do.</p> <p>10 This was a historic event. Clearly a</p> <p>11 once-in-a-lifetime in the history of the</p> <p>12 country event. They could have.</p> <p>13 Q. Did the Post have photographers</p> <p>14 covering other aspects of the Obama</p> <p>15 inauguration?</p> <p>16 A. I believe so.</p> <p>17 Q. Aren't stories published in the</p> <p>18 Post every day without photos?</p> <p>19 A. Some stories.</p> <p>20 Q. Didn't stories about the</p> <p>21 inauguration get published with photos?</p> <p>22 A. My story didn't have a photo.</p> <p>23 Q. But there were many stories about</p> <p>24 the Obama inauguration that ran during those</p> <p>25 several days, right?</p>
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<p>1 FENNER</p> <p>2 A. Yes, if you want your story to get</p> <p>3 good play, to have a prominent position in</p> <p>4 the paper, you want to work hard to make sure</p> <p>5 there is a photographer accompanying your</p> <p>6 story, it is going to take up more real</p> <p>7 estate. It is going to have a bigger splash,</p> <p>8 a bigger look. It is going to heighten the</p> <p>9 strength of the story.</p> <p>10 Q. My question is, there were many</p> <p>11 stories that ran during those several days</p> <p>12 about the inauguration, right?</p> <p>13 A. There are many stories that ran.</p> <p>14 Q. And many of them had photographs,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. So the Post was taking and</p> <p>18 publishing photos from the Obama</p> <p>19 inauguration, right?</p> <p>20 A. Yes.</p> <p>21 Q. In fact, the Post's coverage of the</p> <p>22 Obama inauguration got an award, right?</p> <p>23 A. Yes, with my help.</p> <p>24 Q. And with the help of the editors --</p> <p>25 A. I wasn't finished. Yes, with my</p>	<p>1 FENNER</p> <p>2 help, they won the New York Press Club Award</p> <p>3 that year.</p> <p>4 Q. After the conversation in which</p> <p>5 Mr. Greenfield told you to work out in the</p> <p>6 field and call for permission if you were</p> <p>7 going to come in, did Mr. Greenfield or</p> <p>8 Ms. Gotthelf ever yell at you?</p> <p>9 A. It was a -- it was continuously a</p> <p>10 hostile environment. They would --</p> <p>11 Q. My question is --</p> <p>12 MR. THOMPSON: He is not finished,</p> <p>13 he is not finished answering your</p> <p>14 question, Mr. Lerner. Please let him --</p> <p>15 MR. LERNER: He paused,</p> <p>16 Mr. Thompson.</p> <p>17 MR. THOMPSON: He was in the middle</p> <p>18 of answering. You interrupted him again.</p> <p>19 MR. LERNER: He paused and I</p> <p>20 thought he was finished.</p> <p>21 MR. THOMPSON: You were wrong.</p> <p>22 Q. Mr. Fenner, go ahead.</p> <p>23 MR. THOMPSON: Let the witness</p> <p>24 answer the question, please.</p> <p>25 A. I found it to be a hostile</p>

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<p>1 FENNER</p> <p>2 A. Yes.</p> <p>3 Q. Do you know Luiz Ribiero, a photo</p> <p>4 editor?</p> <p>5 A. What was the name you said before.</p> <p>6 Q. David Rentas?</p> <p>7 A. Before that.</p> <p>8 Q. Juan Arellano?</p> <p>9 A. I know David Rentas and last name</p> <p>10 you mentioned was Luiz who?</p> <p>11 Q. Ribeiro.</p> <p>12 A. Yes, I know him.</p> <p>13 Q. Ribeiro, Rentas, Arellano and</p> <p>14 Cordon are all Hispanics, correct?</p> <p>15 A. I don't know what David -- is it</p> <p>16 Prentas, was that his last name?</p> <p>17 Q. Rentas, R-E-N-T-A-S?</p> <p>18 A. I don't know his ethnicity.</p> <p>19 Q. The others you know to be</p> <p>20 Hispanics?</p> <p>21 A. Luiz is Hispanic.</p> <p>22 Q. Evelyn?</p> <p>23 A. I don't know who Evelyn is and I'm</p> <p>24 unsure of the other name you mentioned.</p> <p>25 Q. Do you know Thomas Ko, K-O?</p>	<p>1 FENNER</p> <p>2 A. No.</p> <p>3 Q. A deputy management editor?</p> <p>4 A. Of the news, of sports?</p> <p>5 Q. You don't know him.</p> <p>6 While you were working in the Post</p> <p>7 offices, did you ever hear anybody call an</p> <p>8 African American by a derogatory name?</p> <p>9 A. I didn't hear that, but I had</p> <p>10 learned that --</p> <p>11 Q. But I'm asking you if you heard it.</p> <p>12 A. I didn't hear anyone --</p> <p>13 Q. That's my question.</p> <p>14 A. I was trying to answer your</p> <p>15 question.</p> <p>16 Q. You did, thanks.</p> <p>17 Did anybody ever say anything to</p> <p>18 you that was -- that you felt was a racist</p> <p>19 comment?</p> <p>20 A. Say?</p> <p>21 Q. Yes. To you.</p> <p>22 A. You mean the "N" word?</p> <p>23 Q. That, or anything else similar that</p> <p>24 you would consider racist?</p> <p>25 A. No.</p>
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<p>1 FENNER</p> <p>2 Q. Leaving aside what was said</p> <p>3 directly to you, did you overhear any</p> <p>4 conversations fitting that description?</p> <p>5 A. No, but I had learned about that</p> <p>6 kind of conduct within the newsroom.</p> <p>7 Q. But you didn't overhear it going on</p> <p>8 in your presence, right?</p> <p>9 A. No, I didn't hear it in my presence</p> <p>10 but I had learned about it.</p> <p>11 Q. Did you ever complain to anybody</p> <p>12 about racist comments or racist statements</p> <p>13 while you were employed at the Post?</p> <p>14 A. No.</p> <p>15 Q. And you were going to say that you</p> <p>16 heard about something what went on. Can you</p> <p>17 tell us what that is?</p> <p>18 A. There was a columnist who worked at</p> <p>19 the paper and he was there when I was there.</p> <p>20 His name is Steve Dunleavy and I heard that</p> <p>21 he had referred to another newsroom colleague</p> <p>22 who was of African descent -- as a matter of</p> <p>23 fact, I believe he was born in Nigeria -- his</p> <p>24 name is Frankie Endozien, I believe,</p> <p>25 E-N-D-O-Z-I-E-N. I think that's it, and I had</p>	<p>1 FENNER</p> <p>2 learned from several people that Steve</p> <p>3 Dunleavy had called him a nigger.</p> <p>4 And I also learned that Steve</p> <p>5 Dunleavy had wrote articles where he referred</p> <p>6 to Latino people as spics. And Steve</p> <p>7 Dunleavy would appear intoxicated and</p> <p>8 sometimes sleep off the alcohol in the</p> <p>9 newsroom.</p> <p>10 Q. Have you personally spoken with</p> <p>11 Frankie Endozien about what you just</p> <p>12 described?</p> <p>13 A. I believe I was on assignment when</p> <p>14 I was at the Daily News and I would ask</p> <p>15 Frankie about his tenure at the paper and</p> <p>16 this is when he was telling me about the</p> <p>17 climate at the paper.</p> <p>18 Q. You still decided to go work for</p> <p>19 the Post, notwithstanding your knowing that?</p> <p>20 A. Well, I'm a fighter and I believe</p> <p>21 in change. And I felt I could do that at the</p> <p>22 Post.</p> <p>23 Q. What year did you have that</p> <p>24 conversation with Frankie Endozien?</p> <p>25 A. I can't remember the exact year.</p>

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Q. Have you ever met Steve Dunleavy?

A. Yes.

Q. How many times?

A. Many.

Q. Where did you meet him?

A. As a competitor at the New York Daily News and we worked together at the New York Post.

Q. When you say you worked together, do you mean you actually worked together on a story or just that you worked at the same company?

A. I would see him in the newsroom and I would see him on assignment.

Q. Did you ever speak to him?

A. Yes.

Q. Did he ever say anything racist to you?

A. He never said anything racist to me, but I'm trying to recall if he would make any racist remarks in my presence while we were both at the story, on a story. That's what I am trying to recall as you mentioned right now.

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Q. In your affidavit, you stated that when you were traveling, the Post did not provide you with the necessary tools to succeed in your job, and you cited a denial of a photographer on the trip to DC. Can you think of any other tools that were denied to you when you were traveling?

A. No.

Q. In paragraph 7 of your complaint, you state that you were denied assignment opportunities, specifically it reads, "Plaintiffs were also discriminatorily denied certain assignment opportunities based on their race and/or color."

A. It says plaintiffs.

Q. Yes.

A. Can I see it?

Q. Sure. It is paragraph 7. I just need that back when you're done. You may have a copy of the complaint in front of you.

What assignment opportunities were you discriminatorily denied based on race?

A. Think that line is referring to Ikimulisa Livingston.

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Q. Anything to add to that answer?

A. No.

Q. So you don't recall any racist stories he made in your presence or any racist remarks that he made in your presence, right?

A. No.

Q. Did Endozien -- did you and Endozien work at the Post at the same time?

A. I don't think so, no.

Q. So whatever comments Dunleavy made to Endozien, and Endozien told you about when you worked at the Daily News, happened before you came to the Post and didn't continue to Endozien after you came to the Post, right?

A. I believe that's correct.

Q. Are you aware of any racist comments made by Dunleavy that were made during the two years you were working for the Post? Or two and a half years?

A. I can't recall.

Q. Are you aware of any other person at the Post making racist remarks?

A. I can't recall.

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Q. OK, so you don't believe that you were denied any assignment opportunities based on race, correct?

A. Correct.

Q. There is also an allegation that you suffered discrimination in pay. Do you believe that that refers to you?

A. Yes.

Q. In what respect did you suffer discrimination in pay?

A. Well, I believe some of my colleagues who had the same level of experience that I had were earning more and also if you had a poor evaluation, you could not receive an increase in pay.

So the fact that I got poor evaluations meant that I didn't get an annual increase.

Q. What white reporters were paid more than you with the same experience and position?

A. I don't have the whole list, but I believe Jeane MacIntosh earned more than I did, Dan Mangan, and there were others, but I